

# **Asset Transfer**

**under the  
Community Empowerment (Scotland) Act 2015**

## **Guidance for Relevant Authorities**

**Draft Final version**

**November 2016**

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## 1. Introduction

1.1. The Scottish Government is determined to see a Scotland where community-led action is celebrated and community ownership is desirable and viable.

1.2. Ownership or control of land and buildings is a powerful tool for communities to drive change and achieve their own goals. In the first place it provides a base for activities and services that might not otherwise be accessible to members of a particular community, and can provide jobs, training and bring income to the local area. More widely, it can provide stability and sustainability for the community organisation, allowing them to develop new initiatives and support other developing groups, and it can create a stronger sense of community identity, cohesion and involvement.

1.3. Many communities in Scotland have already taken on ownership of assets, from public sector or private sellers. A baseline study carried out by the Community Ownership Support Service (COSS) in 2012 identified 2740 community assets owned by community bodies, and there has been increased interest in recent years. Many local authorities, and some public bodies, have operated successful asset transfer schemes, mainly in relation to property they have identified for disposal. There is a thriving network of community landowners, both rural and urban, as well as a range of lease, management and partnership arrangements, and plenty of examples to show the benefits communities can deliver, given the right opportunity.

1.4. The Community Empowerment (Scotland) Act 2015 moves forward from this voluntary approach by the public sector, and introduces a right for community bodies to make requests to all local authorities, Scottish Ministers and a wide-ranging list of public bodies, for any land or buildings they feel they could make better use of. Community bodies can request ownership, lease or other rights, as they wish. The Act requires those public authorities to assess requests transparently against a specified list of criteria, and to agree the request unless there are reasonable grounds for refusal. This shifts the balance of power clearly towards the community body, and ensures that asset transfer is available throughout Scotland.

1.5. Despite the introduction of a statutory scheme, much of the existing best practice will still apply. COSS, funded by the Scottish Government, has developed advice for both community bodies and public sector authorities, based on experience of supporting organisations through the existing, voluntary schemes. A range of other organisations can also provide support to community bodies in developing their proposals, depending on their location and the type of project they have in mind. Links to some helpful websites are provided in Annex C.

## 2. Status of this guidance

2.1. Part 5 of the Community Empowerment (Scotland) Act 2015 sets out the key rights and duties and provides a framework for the asset transfer process. It gives the Scottish Ministers powers to make regulations to fill in more detail of the procedures to be followed. The following regulations have been laid in the Scottish Parliament for scrutiny:

- The Asset Transfer Request (Procedure) (Scotland) Regulations 2016
- The Asset Transfer Request (Appeals) (Scotland) Regulations 2016
- The Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016
- The Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016
- The Community Empowerment (Registers of Land) (Scotland) Regulations 2016

2.2. The text of the Act is available at <http://www.legislation.gov.uk/asp/2015/6/part/5> . The text of the Regulations will also be available at [www.legislation.gov.uk](http://www.legislation.gov.uk) , or through [www.scottish.parliament.uk](http://www.scottish.parliament.uk) .

2.3. Subject to the agreement of the Parliament, Part 5 of the Act and the Regulations will come into force on **23 January 2017**.

2.4. **This document constitutes guidance under section 96 of the Act**, which relevant authorities are required to have regard to in carrying out their functions in relation to asset transfer. It has been developed in discussion with a steering group and short life working group of stakeholders, listed in Annexes A and B, and takes account of comments made in response to the consultation on draft regulations conducted from 17 March to 20 June 2016. Discussions with stakeholders at many meetings and events during development of the Bill and since the Act was passed have also informed the guidance, and we are grateful to everyone for their help.

2.5. Separate guidance is provided for community transfer bodies, and you may sometimes find it helpful to refer to that as well. Both versions cover the whole process, but focus on the points where each party has to take action – for example, there is more guidance for community transfer bodies on completing the request form, and more for relevant authorities on the acknowledgement and notices they have to issue following receipt of a request.

2.6. This guidance is published as a “draft final” version. The statutory requirements and procedures are now fixed (subject to approval by the Scottish Parliament), and the recommended approach reflects best practice as discussed with both public sector and community sector stakeholders with experience of asset

transfer. However, there is still flexibility to adjust the wording to make the guidance clearer. Please send any comments, questions and suggestions to [assettransferguidance@gov.scot](mailto:assettransferguidance@gov.scot) . Final guidance will be published when the legislation comes into force.

2.7. More information about the development of the Act and its implementation can be found on the Scottish Government website at <http://www.gov.scot/Topics/People/engage/CommEmpowerBill>

### **3. Getting started**

3.1. This guidance focuses on the procedures which relevant authorities are required to carry out under the asset transfer legislation. However, for asset transfer to be successful, there also needs to be a wider context of partnership with and support for community bodies and community-led activity. This aligns with the approach which is encouraged throughout public services in Scotland, and should build on existing relationships.

3.2. COSS provides extensive advice for relevant authorities on the benefits of asset transfer and how to prepare and work with community bodies:

<http://www.dtascommunityownership.org.uk/public-bodies>. The following provides some brief pointers.

3.3. Community transfer bodies are encouraged to discuss their ideas with the relevant authority at an early stage. This may be when they have identified an asset they are interested in, or to discuss their ideas and needs and see whether any suitable assets are available. Relevant authorities should be open to such approaches and ready to direct community transfer bodies to sources of support if needed.

3.4. It is important that community transfer bodies can easily identify who to contact about asset transfer, and that all relevant staff know how to direct any enquiries, or requests. The legislation does not require a single point of contact to be identified, but it should be clear who is responsible, whether it is a central team or a named official for each region, for example.

3.5. In discussions with community transfer bodies, officials should be clear about the asset transfer request process and should, for example, avoid making commitments or assumptions about the outcome of any potential request. Information about the criteria and procedures used by the authority should be made available to help community bodies develop their requests.

#### **Assets and services**

3.6. Sometimes a community transfer body may wish to take over a building or land and the services which are delivered by the relevant authority from those premises. This could be addressed by an asset transfer request, or a participation request in relation to improving the outcome of the services. We do not recommend using both types of request together.

- If the community body wants to run a service which is tied to the particular premises, and does not want to use the premises for any other purpose, this should be addressed through a participation request. A lease or other arrangement in relation to the premises can be negotiated as part of the agreement to provide the service.



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- If the community body wants to take control of the asset in order to develop the service on its own terms or use the property for other purposes, this should normally be addressed through an asset transfer request.
- An asset transfer request can be accompanied by negotiations for the public authority to contract with the community body to continue to provide a service, as a source of income.

#### **4. Summary of asset transfer under the Community Empowerment Act**

4.1. Part 5 of the Community Empowerment (Scotland) Act 2015 allows a community transfer body to make an asset transfer request to a relevant authority. Chapter 5 of this guidance explains the requirements for being a community transfer body. A list of relevant authorities is in chapter 6.

4.2. A request can be made in relation to any land which is owned or leased by the relevant authority. (In law, “land” includes buildings and any other structure on the land, such as a bridge, wall or pier.) Chapter 7 explains the information that relevant authorities have to publish or provide on request about their property.

4.3. The community transfer body can ask to buy or lease the land, or to have other rights, for example to occupy or use the land for a particular purpose.

4.4. Chapter 8 sets out the information that a community transfer body must include in its request. This includes the reason for making the request, the benefits of the proposals, and the price they are prepared to pay. Chapters 11 and 12 give guidance on valuation of the property and deciding on a price.

4.5. There is a process for the relevant authority to acknowledge the request, notify others who may be interested, and allow them to make representations. This is explained in chapter 9.

4.6. Where an asset transfer request has been considered and refused (including any review or appeal), the relevant authority does not have to accept another similar request for the same property if it is made within two years of the first. The relevant authority can accept a repeat request if it wishes, for example if it is from a genuinely different group or the proposal has been improved. More guidance on this point is provided in chapter 9.

4.7. Once an asset transfer request has been made, the relevant authority is not allowed to transfer the property to anyone else until that request process has been completed, including any appeals. This does not apply if the property was advertised for sale, or negotiations had started to transfer it to someone else, before the asset transfer request was made. This is explained in more detail in chapter 9.

4.8. In deciding whether to agree to or refuse the request, the relevant authority must consider the following things:

- the reasons for the request,
- any other information provided in support of the request
- whether agreeing to the request would be likely to promote or improve
  - economic development
  - regeneration

- public health
- social wellbeing
- environmental wellbeing, or
- whether agreeing to the request would be likely to reduce socio-economic inequalities
- any other benefits that might arise if the request were agreed to
- how the request relates to the relevant authority’s duties under Equalities legislation
- any obligations that may prevent, restrict or otherwise affect the authority’s ability to agree to the request

4.9. The relevant authority must compare the benefits of the proposal in the request to the benefits of any alternative proposals, whether those come from the authority itself or anyone else, and consider how the potential benefits relate to the functions and purposes of the authority, and any other matters they consider relevant. More detail is provided in chapter 10.

4.10. Chapters 11 to 14 provide some advice on how to obtain a valuation of the property, how to assess non-financial benefits, and on using conditions to protect any discount given, if required.

4.11. When the relevant authority has made its decision, it must issue a “decision notice” setting out its reasons for agreeing or refusing. Details of what must be included in a decision notice are given in chapter 15.

4.12. If the relevant authority agrees to the request, there is a process to negotiate the final contract, which is explained in chapter 16. This can allow time for the community body to confirm funding before the final transfer takes place.

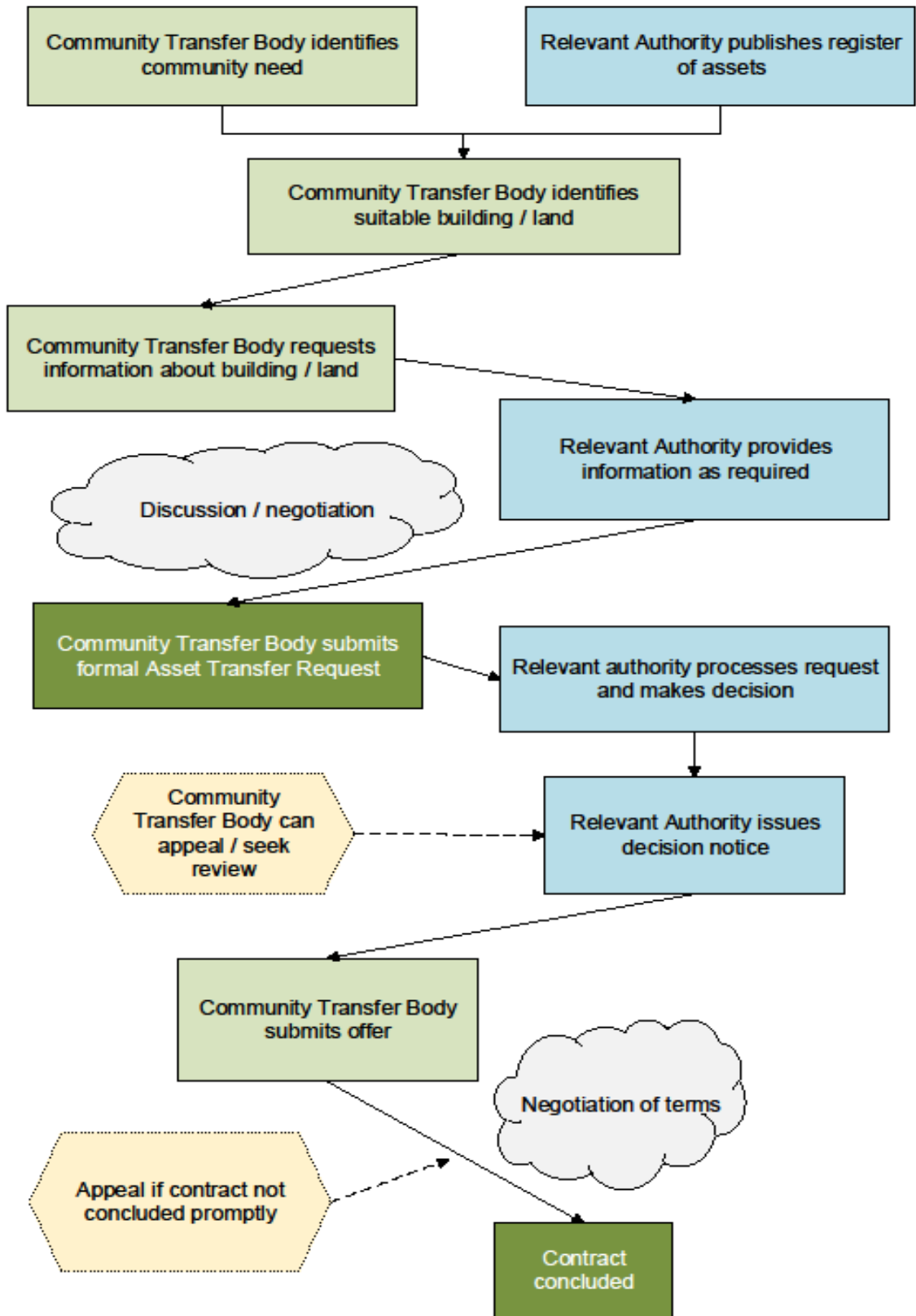
4.13. There are various options for review or appeal if:

- the request is refused,
- no decision is given within the time allowed, or
- the community transfer body does not agree with conditions imposed by the relevant authority.

Details of the review and appeal processes are set out in chapters 17 to 21.

4.14. At the end of each financial year, each relevant authority must publish a report on the number of requests it has received and the number which have been agreed, refused, appealed etc. It must also report on action it has taken to promote the use of asset transfer requests and to support community transfer bodies to make requests. Guidance is provided in chapter 21.

### Summary of Asset Transfer process



## 5. Community Transfer Bodies

5.1. To make an asset transfer request, an organisation needs to be a “community transfer body”. This is defined in section 77 of the Act. It can be either a **community controlled body** (defined in section 19) or a body **designated by the Scottish Ministers**.

5.2. A community controlled body does not have to be incorporated, but it must have a written constitution, incorporating the provisions set out in paragraph 5.11.

5.3. A community controlled body which wants to make an asset transfer request for ownership must also be incorporated as a company, a SCIO (Scottish Charitable Incorporated Organisation) or a BenCom (Community Benefit Company), with a minimum of 20 members and provision for transfer of its assets on winding up. This is set out in section 80.

5.4. The Act does not require a community transfer body to be incorporated in order to make an asset transfer request for lease or other rights. Since the property remains in the ownership of the relevant authority, it is for the authority to decide what type of legal structure is appropriate, depending on the rights requested. This should be proportionate, taking into account the type of activity, duration of the lease or other agreement and the scale of the responsibilities involved.

5.5. SCVO has helpful advice on its website <http://www.scvo.org.uk/setting-up-a-charity/> for groups setting up a formal organisation, including advice on charitable status.

5.6. Model governing documents will be provided by the Scottish Government for an unincorporated association, company, SCIO or BenCom which meet the requirements for a community controlled body.

5.7. Bodies eligible for community rights to buy are also eligible for asset transfer – see paragraph 5.21.

5.8. An asset transfer request must be accompanied by a copy of the community transfer body’s constitution or other governing documents. You should check that it meets the requirements of the Act set out below. Even if they appear to have used the model documents, you should check that they have not deleted any of the provisions necessary to qualify as a community transfer body.

5.9. In deciding whether a community organisation meets the requirements for a community transfer body, either as a community controlled body or in relation to any designation order, you should be aware that this may have an impact on other relevant authorities. If an organisation is accepted by one relevant authority, it will be reasonable for them to expect that they will also be accepted by others. Other community organisations that use the same terms in their governing documents, for

example as fellow members of a wider association, may also expect the same treatment. You should therefore be very clear with the community organisation if there is any uncertainty over their eligibility.

### **Requirements for a community controlled body**

5.11. To qualify as a community controlled body, the body's constitution, Articles of Association or registered rules must include the following:

(a) A definition of the community to which the body relates.

The group may represent the community in a particular area or people who have a common interest or characteristic. (See below for more on "communities of interest"). The definition should be clear enough to show whether a person is a member of the community or not.

(b) provision that membership of the body is open to any member of that community

Membership of the body must be open to anyone who is a member of the defined community. There must not be any additional requirements.

It has been queried whether membership is open to all if membership fees are charged. The Scottish Government's view is that fees may be charged, but they should be set at a level that is affordable for members of the community. Membership fees are more common for communities of interest based around a common activity, for example for a sports club to cover insurance, hall hire and registration with the sport's governing body.

(c) provision that the majority of the members of the body is to consist of members of that community

People (and organisations) who are not members of the defined community may be allowed to join the body, but the governing documents must require that those who are members of the community must always be in the majority. The model documents handle this requirement by providing for Ordinary Members and Associate Members. Junior Members may also be allowed. If the number of Ordinary Members falls below the number of other members, the Board should not be able to take any action except to seek to recruit more Ordinary Members.

If the asset transfer request is for ownership, the governing documents must require the body to have at least 20 members.

(d) provision that the members of the body who consist of members of that community have control of the body

Having “control of the body” means that the members of the community are in charge of the decisions made by the body. This may be arranged by providing that only Ordinary Members can vote at General Meetings, a majority of the Board must be made up of Ordinary Members and the Chair and Vice-Chair must be Ordinary Members, where they have a casting vote. If the model documents are not used, you may have to search for measures that implement this requirement.

(e) a statement of the body's aims and purposes, including the promotion of a benefit for that community

The aims and purposes may include activity that goes wider than the defined community, such as raising money for charity, promoting their interest to other people or sharing experience with communities in other areas. But at least one of the purposes of the body must clearly be for the benefit of the community they represent.

(f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

Any money or property the body has, after covering its running costs, must be used to benefit the community as a whole. Bodies incorporated as co-operatives, which distribute their profits or dividends to members of the body, are not eligible to make requests for ownership.

If the request is for ownership, and the community transfer body is a company, the Articles of Association must include arrangements for what happens to the body's assets if it is wound up. This must require that the property is transferred:

- (i) to another community transfer body,
- (ii) to a charity,
- (iii) to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,
- (iv) to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or
- (v) if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

If the organisation is a SCIO or BenCom, there will be similar provisions to ensure that remaining property is transferred to another body with similar structure and aims.

## **Communities of interest**

5.12. Unlike community right to buy, the legislation on asset transfer does not define what a “community” can be. It simply requires a community transfer body to define the community it relates to, and ensure the body is open to and controlled by members of that community, and uses its assets to benefit that community. Whether an organisation is eligible to make an asset transfer request depends on their constitution meeting the requirements, not on what community it represents.

5.13. A community can be any group of people who feel they have something in common. In many cases, it is that they live in the same area. However, it can also be that they share an interest or characteristic. Communities of interest could include faith groups, ethnic or cultural groups, people affected by a particular illness or disability, sports clubs, conservation groups, clan and heritage associations, etc. They may be very specialised or local, ranging up to national or international groups with thousands of members.

5.14. Large charities or Non-Governmental Organisations may qualify as community controlled bodies, but you will need to check their governing documents to ensure they relate to a defined community, that the members of that community are always in the majority and in control of decision-making processes, and that at least one of the purposes of the body is to provide a benefit to the community they represent.

5.15. An asset transfer request should be judged on the benefits it will deliver, not on the community it represents. However, relevant authorities may also take into account the impact on other groups, such as any loss of facilities, and any wider benefits or potential for conflict. Bodies representing communities of interest should be encouraged to engage with and seek support from the local community.

## **Designation**

5.16. The Scottish Ministers can designate a body to be a community transfer body. They will do this by making an order. Ministers can either designate an individual body, or could designate a class of bodies, if they decided in future that all organisations of a particular type should be able to make asset transfer requests. A designated community transfer body is only entitled to make a request for ownership if the designation order states that it is allowed to do so.

5.17. The criteria for community controlled bodies are there to make sure the organisation truly represents the members of its community and is open and inclusive. It must also be clear that the organisation uses its assets and resources for the benefit of that community as a whole and not, for example, for the private benefit of those individuals who are members of the organisation. Ministers will normally only designate a body (or a class of bodies) if it works in a way similar to a



community-controlled body, and there is a good reason why it is not able to meet the requirements in the Act. Examples could include a charitable trust which cannot change who is on its Board, or an organisation representing a small community which could not reasonably get 20 members.

5.18. Due to the responsibilities involved in dealing with any property, it is unlikely that unconstituted organisations will be accepted for designation. Organisations seeking to be designated to buy property should be incorporated.

5.19. Ministers may consider designating a class of bodies as community transfer bodies if the rules for being that type of body are similar to the requirements for a community controlled body. Examples could include members of an umbrella organisation, or bodies which are regulated under particular legislation. This could be used to avoid the need for other legislation, or the rules of the umbrella organisation, to be amended to match the asset transfer requirements.

5.20. The guidance for community transfer bodies includes instructions on applying for designation.

### **Bodies eligible for Community Rights to Buy**

5.21. The Scottish Ministers have made an order designating organisations that meet the requirements for the community right to buy or the crofting community right to buy under the Land Reform (Scotland) Act 2003 as community transfer bodies which can make asset transfer requests, including for transfer of ownership. Their constitution, articles of association or registered rules will need to meet the requirements set out in:

- subsection (1), (1A) or (1B) of section 34 of the 2003 Act (community right to buy), or
- section 71(a) to (h) of the 2003 Act (crofting community right to buy),

5.22. Further guidance and model governing documents are available at <http://www.gov.scot/Topics/farmingrural/Rural/rural-land/right-to-buy>. The text of the legislation is available through [www.legislation.gov.uk](http://www.legislation.gov.uk).

5.23. Bodies seeking to use this designation to make an asset transfer request do **not** require a confirmation letter from the Scottish Ministers. (This letter is needed to confirm that the main purpose of the community body is consistent with sustainable development, before registering an interest in land for the purposes of community right to buy.) It is for each relevant authority to decide whether a community organisation is eligible to make an asset transfer request, either as a community controlled body or as a designated body. **The Scottish Government will not give views on the eligibility of community bodies in relation to asset transfer requests.**

5.24. We expect that bodies eligible for the right to buy abandoned, neglected or detrimental land, or the right to buy land for sustainable development, will be designated when those parts of the legislation come into force.

## **6. Relevant Authorities – who can an asset transfer request be made to?**

6.1. Asset transfer requests can be made to any “relevant authority”. Relevant authorities are listed in schedule 3 to the Act. They are:

- Local authorities
- Scottish Ministers (including agencies such as Forest Enterprise Scotland and Transport Scotland)
- Crofting Commission
- Further Education colleges which are “incorporated colleges”
- Health Boards, both regional and Special Health Boards
- Highlands and Islands Enterprise
- National Park Authorities (Cairngorms and Loch Lomond and Trossachs)
- Regional Transport Partnerships
- Scottish Canals
- Scottish Courts and Tribunals Service
- Scottish Enterprise
- Scottish Environment Protection Agency
- Scottish Fire and Rescue Service
- Scottish Natural Heritage
- Scottish Police Authority (who own all land and buildings used by Police Scotland)
- Scottish Water

6.2. Contact details for all relevant authorities will be provided on the Scottish Government website.

6.3. Section 78 of the Act says that the Scottish Ministers can add new relevant authorities or can remove relevant authorities or amend the list, for example if an organisation changes its name. Organisations which are not already on the list in Schedule 3 can only be designated as a relevant authority if they are:

- a part of the Scottish Administration
- a Scottish public authority with mixed functions or no reserved functions, or
- a publicly-owned company – this means any corporate body which is wholly owned by one or more relevant authorities already on the list.

6.4. This covers most public bodies and officers who deal with matters which are devolved to the Scottish Parliament.

6.5. An order has been laid for the Scottish Parliament's approval to designate Historic Environment Scotland as a relevant authority.

6.6. UK Government departments and agencies cannot be listed as relevant authorities, nor can private or voluntary sector organisations. For example, people have asked whether the Ministry of Defence, Network Rail or the National Trust for Scotland could be included. The Act does not allow any of these to be listed as relevant authorities.

## **7. Helping community bodies to identify suitable assets**

7.1. In the past, asset transfer has usually only been available for land or buildings which a public authority has decided to dispose of, and has decided is suitable for community use. The Act puts more power in the hands of communities by allowing them to request whatever publicly held property they believe will be most suitable to deliver their objectives. The decision process provides for a comparison between the benefits of the community body's proposal and the benefits of any alternative, including the current use.

7.2. The guidance for community bodies are encourages them to start by thinking about what they want their project to achieve – for example, to help young people gain new skills through training, create greater community cohesion by providing a place for people to meet or hold events, or improve health and wellbeing by providing access to the natural environment.. Then they can consider whether they need an asset to deliver their aims, and look for somewhere that will be suitable. This is highlighted in advice from the Community Ownership Support Service ([www.dtascommunityownership.org.uk](http://www.dtascommunityownership.org.uk)). Community projects which focus on “saving” a building threatened with closure or demolition often run into difficulties later if they have not fully thought through what they will do with it and the costs involved.

7.3. Publicly owned land and buildings, and how they are used and maintained, can have a significant impact on the community in which they are located, whether they are used to provide services, have historic connections to the community, or affect patterns of traffic and custom for local businesses. Public authorities are generally conscious of the need to engage with communities over any change to services, but you should also consider seeking views on the disposal or future use of premises which become vacant as a result. Relevant authorities may wish to invite community bodies to register their potential interest in particular types of asset, such as offices, halls or business units. They can then be contacted if suitable spaces become available, or included in discussions where relevant new facilities or co-location of services are being considered.

### **Register of land**

7.4. To help community bodies identify assets that may be available through asset transfer, section 94 of the Act requires each relevant authority to establish, maintain and make available a register of land which it owns or leases, “to the best of its knowledge and belief”.

7.5. Effective asset management systems are an essential part of financial management. However, it is recognised that the ownership and boundaries of land are sometimes unclear, especially where records are old and land has changed hands by statutory powers or reorganisation of public bodies. The legislation

therefore does not require relevant authorities to make checks or confirm title before publishing information in the register of land. The Scottish Government has committed to improving the accuracy of information about land ownership, and is seeking to have all public sector land included on the Land Register by 2019. The process of undertaking voluntary registration will, over time, also improve the accuracy of information held by public bodies and published in their register of land. However, the two processes are not formally linked.

7.6. Relevant authorities will already hold the information which is required to be included in the register of land, in their asset registers held for accounting purposes and in property management systems. In some cases the information may already be published as part of a publication scheme under the Freedom of Information (Scotland) Act 2002<sup>1</sup> (“FOISA”). These resources should be used as far as possible to minimise the work required to comply with the requirement in section 94 of the Community Empowerment Act. However, some additional work may be required to bring the information together and make it accessible to communities.

7.7. It is for each relevant authority to determine whether a particular property is required to be included in the register, depending on the individual terms of ownership or lease in each case.

7.8. The Act requires that the register must be maintained. If the register is not linked to your authority’s internal systems to be updated automatically with any changes, it should be reviewed at least every three months, and the date of the last update should be shown on the register. It will be in the authority’s interest to keep the register current, to avoid enquiries about properties you no longer own.

### **Land which need not be included in the register**

7.9. The Act allows the Scottish Ministers to make regulations specifying types of land that relevant authorities need not include in their registers. Following consultation and discussion with various relevant authorities, a number of types of land have been specified in the Community Empowerment (Registers of Land) (Scotland) Regulations 2016.

7.10. Please note that the register of land to be produced under section 94 does not determine what may be requested by a community transfer body. An asset transfer request may be made for any land owned or leased by a relevant authority, including land which is not included in the register.

7.11. The following types of land need not be included in relevant authorities’ registers:

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<sup>1</sup> See guidance at <http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/PublicationSchemeHome.aspx>

- (a) **Roads.** Including all roads would make registers much larger for no purpose, as community bodies are unlikely to want to take over roads. If they do, it is usually clear who to approach. The definition covers pavements, footpaths and cycle paths. It does not cover footpaths on land “owned or managed by a local authority and used by them for the provision of facilities for recreational, sporting, cultural or social activities”, but these need not be listed separately from the land they cross.
- (b) **Underground railways,** together with stations, entrances and other land essential to the operation of the railway. This applies only to Strathclyde Partnership for Transport (SPT), in relation to the Glasgow Subway (Network Rail, as a UK body, is not a relevant authority). It would not be practically possible for a community transfer body to take over individual parts of the Subway, since it operates as a whole. If they wanted to use areas within stations, for example, it is clear who to approach.
- (c) **Canals.** Scottish Canals owns and operates the five main canals in Scotland. As with the Subway, it would not be possible for a community transfer body to take over a section of a canal, as the whole network operates together. The definition includes towpaths, bridges, reservoirs etc, which are essential to the operation of the canal, but Scottish Canals will need to list the other land and buildings it owns.
- (d) **Bus stations.** Bus stations may be operated by local authorities or Regional Transport Partnerships. They need not be included in registers of land, along with roads, railways and canals.
- (e) **Houses, hostels and lodging-houses.** As with roads, including all houses would make registers much larger and more difficult to maintain and search. There are also concerns about the privacy of tenants and security for accommodation for vulnerable people. Community bodies do not often want to take over houses that are occupied, and special arrangements would apply if they wanted to transfer social housing to a new landlord.

The exclusion for houses, hostels and lodging-houses does not apply if they are surplus to the requirements of the relevant authority, which will usually mean they are empty and available for sale. In areas where there is a shortage of affordable housing, particularly in small rural communities, community bodies may be interested in taking over such properties, and relevant authorities should consider engaging with them before putting the house on the market.

The exclusion also does not cover hostels and lodging-houses operated on a commercial basis, for example as tourist accommodation.

- (f) **Land used for the supply of drinking water and disposal of waste water, and certain reservoirs.** The location of these facilities is not published in the interests of national security.
- (g) **Police radio masts and sites used for covert policing.** The location of these facilities is not published in the interests of national security and the prevention and detection of crime.
- (h) **Souvenir plots.** These are areas of land that are of “inconsiderable size and no practical utility” and have never been registered, as described in section 22 of the Land Registration (Scotland) Act 2012. However, you should be aware that community groups, particularly those interested in community growing, may value even small patches of land and you may receive enquiries about them.
- (i) **Mineral rights** owned or leased separately from the land to which they relate. The ownership and exercise of such rights is likely to be complex and would require significant investigation by the community body.

7.12. Land of the types specified in the regulations can be included in your authority’s register if you believe this would be helpful for communities, or more straightforward to provide. You should consider the issues of volume, security and privacy outlined above before taking such a decision.

### **Information about each property**

7.13. As a minimum, the register must identify the property and its location. This should normally include a grid reference, the street address (including postcode) if there is one, any name the land or building is known by and its UPRN if there is one (Unique Property Reference Number – these are provided by local authorities through the One Scotland Gazetteer <http://onescotlandgazetteer.org.uk/> ). Users should be able to search the register for particular properties, and also to search for land in particular areas. National public bodies should identify at least the local authority area for each property; local authorities and other authorities with a lot of property might want to identify smaller districts or neighbourhoods.

7.14. A basic description of the current use should also be given if possible, such as “offices”, “clinic”, “depot”, “park”. Where a relevant authority owns an area of land with several buildings on it, it is not necessary to identify the buildings separately. For example, a hospital, college campus or business park could be listed as one property. For large areas such as forests, country parks or nature reserves it may be helpful to identify substantial buildings, but there is no need to list every storage shed or shelter.

7.15. You should consider what additional information could be included in the register to help community bodies understand the status of each property and



whether it may be suitable for their needs, without having to make further enquiries. This will, of course, depend on the information your authority holds and how easily different datasets can be linked. Details that may be helpful include:

- The department responsible for it or account it is held on (for local authorities);
- Whether it is owned or leased by the authority (there is no need to provide any details of a private owner, but it would be helpful to note if the owner is another relevant authority)
- Whether it is vacant, occupied by the authority, tenanted, surplus, etc
- Size –it is important to be clear what this represents, for example the total area of the plot, the footprint or the floor area of the building
- Any heritage or environmental designations affecting the land
- Any known restrictions on disposal or future use of the property, such as common good a trust deed, etc. It may be appropriate to include a caveat that other restrictions may come to light on investigation.

7.16. Notes attached to the register should also help community bodies to understand the information provided. Any abbreviations, codes or technical terms should be explained, and contact details provided for enquiries, including for different departments if appropriate. This is also an opportunity to explain the purposes for which the authority holds land and buildings and any general restrictions on your ability to dispose of property, or of particular categories of property.

### **Publishing the register**

7.17. There is no set format in which the register must be made available, although it must be online. It will depend on how the information is currently held, the number of properties to be listed and how frequently changes are made. Ideally you would provide a map-based, searchable system which is automatically updated from the authority's own property management system; some authorities already have such systems available to the public. Text-based systems with the ability to search or filter entries by location or description could also be used. As a minimum, authorities with only a small number of properties on their register (less than 100) could provide a table or simple spreadsheet with the ability to search for text.

7.18. There are a number of projects already in progress to improve public access to information about land, including ScotLIS (managed by Registers of Scotland) and the Spatial Hub <http://www.spatialhub.scot/> (managed by the Improvement Service), in addition to the requirements of the INSPIRE Directive for publishing spatial datasets. If you are developing a new system to maintain or present your register, it should be compatible with other ongoing projects, and compliant with INSPIRE, so that in time they could potentially be linked together. Speak to your geographic

information or spatial data specialists to ensure you take advantage of any existing work.

7.19. There are no plans at present to provide a single, central register for all relevant authorities. However, relevant authorities may wish to combine with others in the same area or of similar types. There will be an asset transfer page on the Scottish Government website, [www.gov.scot](http://www.gov.scot), with links to all relevant authorities' pages.

7.20. In addition to making the register available online, arrangements must be made for members of the public to inspect it, free of charge, at reasonable times and at such places as the authority may determine. This does not mean that a full paper version of the register has to be produced, although this may be practical for some authorities. Alternatives could be, for example, to enable people to use the register on a computer at a public enquiry office, or to send out printed extracts in response to telephone enquiries.

7.21. For local authorities and others which have public offices across their area, it should be straightforward to make arrangements for people to inspect the register. Others may only be able to provide this service at a few locations. Members of community bodies may be able to access online registers at libraries or community hubs, which are generally used to helping users find information. You should ensure your register is easy to find and has clear instructions for use.

7.22. You must also be ready to provide information from your registers in alternative languages and formats if requested, to meet equality requirements.

### **Enquiries about land**

7.23. As mentioned above, an asset transfer request can be made for any land owned or leased by the relevant authority, even if it is not on the register. You may receive enquiries about land which someone believes is owned or leased by your authority, which is not on your register. You should aim to respond helpfully to such queries, for example providing pointers if you believe the land is owned by another relevant authority. Even where there are security issues about the publication of lists or maps of sites, it will often be possible to respond to a particular request about an individual property.

7.24. If it appears that significant cost would be involved in answering the enquiry, or it involves information that you think should be withheld, you should consider it in line with the requirements of FOISA and the Environmental Information Regulations (EIRs). Remember that there is no requirement to state that the request is made under this legislation, and the EIRs do not even require a request to be in writing. This consideration may indicate that it is appropriate to direct the community body to

Registers of Scotland<sup>2</sup> to investigate ownership, or to charge a fee if substantial work is required to provide the information.

7.25. It is important that all staff are aware of the asset transfer legislation (as well as FOISA / EIRs requirements) and where to direct any enquiries. Community bodies may ask any staff they see on site, rather than contacting a central office or accessing your website. It is essential that they are put in touch directly with officers dealing with asset transfer who can provide accurate information, for example about the status of the building and any future plans. It can be difficult to build positive relationships later if people have received misleading information, or have not had an answer to their enquiries. Officers should also keep in mind that, while it is helpful to provide advice, community transfer bodies ultimately have a right to make a request for any property, on their own terms, and to receive a formal decision in line with the legislation.

### **Further information about land**

7.26. Once they have identified one or more properties that may be suitable for their project, a community body will need further information about them. They will need to decide whether the land or building is suitable for their planned activities, what the running costs will be, and how much to offer for it. If they intend to request ownership or a lease with repairing responsibilities, they will need information about the structural condition of any building, other rights on the land, and so on.

7.27. We recommend that community bodies should make contact with the relevant authority as early as possible and there should be an open discussion about the community's objectives and property that may be suitable. The relevant authority should be open about the information it has, including practical knowledge about managing the property, and how other information might be obtained. Most importantly, you should ensure that the community transfer body is aware of any information that is likely to be a significant factor in the authority's decision on the request.

7.28. Although the Scottish Ministers may make regulations about information which a community body may request from a relevant authority about land for which they intend to make an asset transfer request, no such regulations have been made so far. We consider that FOISA and the EIRs provide sufficient rights for community bodies to request any information they may require. The exemptions and exclusions provided by this legislation are equally appropriate in relation to asset transfer, for example the ability to withhold information on grounds of protecting personal data, commercial confidentiality or national security. These exemptions are also backed by a right to a review and appeal to the Information Commissioner if information is withheld without good reason. Further guidance on these rights is available on the

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<sup>2</sup> <https://www.ros.gov.uk/>

Scottish Information Commissioner’s website,  
<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.aspx> All staff who may be dealing with enquiries should be familiar with the requirements.

7.29. Relevant authorities may not have current, detailed information about all their properties, for example in relation to condition and energy costs. Where they do it will have been produced for the authority in relation to their use of the building, and may not be appropriate for the community transfer body to rely on. Professional surveys produced for the authority may also be confidential to them. You should seek to make as much information available to the community body as possible, but these kinds of caveats should be made clear.

7.30. Ultimately it is the responsibility of the community transfer body to ensure it has all the necessary and relevant information to develop its proposals. There is no requirement for the relevant authority to obtain information or commission reports to provide to the community body, which it does not already have. However, as a way of supporting them, the relevant authority may agree to share the cost of producing or commissioning new information, and provide assistance by providing information to surveyors, facilitating access to the site, and so on. Funding for project development work such as surveys may be available where the community body proposes to buy the property. It is less likely to be available for proposals for lease.

7.31. Where an authority is seeking to dispose of a property, or considers that a community proposal deserves support, it may be appropriate to draw together a “sales pack”, which would contain information such as:

- title reports
- rateable value
- size – including site or building plans if appropriate
- any planning restrictions, heritage designations, environmental designations, or other restrictions on future use
- information on any tenancies, occupancy agreements etc (as far as possible under confidentiality)
- Coal authority report
- utility / service information

For buildings

- condition and suitability reports
- asbestos reports and management plan
- energy costs (for current use) and / or Energy Performance Certificate

For land

- contamination
- for agricultural or forestry land, any relevant planting records, management plan or similar.

## **8. Requirements for an Asset Transfer Request**

8.1. Ideally, you will be aware of any community body's intention to make an asset transfer request before it is formally submitted. Community transfer bodies are strongly advised to contact the relevant authority and discuss their proposals at an early stage. You should make sure it is easy for community bodies to get information about the scheme and that all relevant officers are aware of it and can direct enquiries to the appropriate team. At this stage you can also, if appropriate, direct the community body to other sources of support – see Annex C.

8.2. In the past, most voluntary asset transfer schemes have taken a two-stage approach. Community bodies were asked to submit outline proposals or expressions of interest, and if this was given approval in principle they would be supported to develop a full case to go forward for a final decision. While the statutory scheme requires a full request to be made to initiate the process, it may still be helpful to invite outline proposals as a “pre-application” stage. Community bodies would then know whether they had support from the relevant authority before undertaking the substantial work to produce a full asset transfer request, or applying for funding. However, they will still have the right to submit an asset transfer request without going through any “pre-application” stage, or if their outline proposals have not been supported.

8.3. Whatever other arrangements may be in place, community transfer bodies have a right to submit an asset transfer request without any previous discussion and you must be ready to process it in accordance with the requirements of the Act.

### **Content of a request**

8.4. The legislation requires certain information to be specified in an asset transfer request. This is set out in section 79(4) of the Act and regulation 3 of the Asset Transfer Requests (Procedure) (Scotland) Regulations 2016 (“the Procedure Regulations”). In terms of regulation 5 of the Procedure Regulations, an asset transfer request is not treated as having been made until all the required information is received by the relevant authority. This chapter lists what is required and gives guidance on what you should expect to see under different headings. The next chapter explains how to process the request, and what to do when a request is incomplete.

8.5. For points (k) to (o) below, covering information on areas such as the benefits of the request and how it is to be funded, only outline information is required to accept an asset transfer request as complete and valid. The relevant authority can seek further detail during the process, and the community transfer body may provide additional information, in particular in response to any representations made about the request. The relevant authority may decide to refuse the request if it does not feel it has sufficient information on the proposals. The level of detail required

should be proportionate to the scale and nature of the request, but the community transfer body should always be given the opportunity to provide any missing information which is considered to be key to the decision.

8.6. A standard form for an asset transfer request is provided on the Scottish Government website. This is intended to help community transfer bodies to make sure they provide all the information needed for a valid request, but is not statutory. You could also provide a tailored form for your own relevant authority, which may ask for additional information specific to your organisation, but you cannot require a community transfer body to use any particular form. The only requirement is that they provide all the information specified in the Act and Regulations.

**An asset transfer request must be made in writing and must:**

- A state that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015
- B contain the name and contact address of the community transfer body
- C be accompanied by a copy of the constitution of the community transfer body
- D if the request is made by a body which is not a community controlled body, explain the basis on which the body is a community transfer body
- E specify the land to which the request relates
- F specify whether the request falls within paragraph (a), (b)(i) or (b)(ii) of section 79(2), ie whether it is a request for ownership, lease or other rights in the land
- G if the request is for ownership, specify the price that the community transfer body would be prepared to pay for the transfer of ownership of the land
- H if the request is for lease, specify
  - the amount of rent that the community transfer body would be prepared to pay,
  - the duration of the lease, and
  - any other terms and conditions that the community transfer body considers should be included in any lease
- I if the request is for other rights, specify the nature and extent of the rights sought
- J specify any other terms or conditions applicable to the request
- K specify the reasons for making the request
- L describe how the community transfer body proposes that the land is to be used
- M specify the benefits which the community transfer body considers will arise if the authority were to agree to the request
- N outline how it is proposed that—
  - the transfer of ownership of the land, the lease of the land or the conferral of other rights in respect of the land on the community transfer body (as the case may be); and
  - the proposed use of the land,are to be funded
- O describe the level and nature of support for the request from the community to which the community transfer body relates.



## **Guidance on the requirements for making an asset transfer request**

### **A State that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015**

8.8. This is included to make clear that the community transfer body intends to make an asset transfer request, even if it does not include all the required information.

### **B Name and contact address of the community transfer body**

### **C Copy of constitution**

### **D How the body is a community transfer body**

8.9. The name and contact address of the community transfer body are required. The form also gives space for an email address and telephone number.

8.10. The form states that by providing an email address the community transfer body agrees that the relevant authority can send any correspondence relating to the request to that address. Under regulation 12 of the Procedure Regulations they are also deemed to give consent if they send any material by email (if the form is sent from a different email address than is given on the form, you will need to clarify which they intend to be used). The community transfer body can ask the relevant authority to stop sending correspondence by email, or change the email address to which correspondence should be sent, by giving 5 working days' notice.

8.11. The organisation's constitution, articles of association or registered rules must be attached, so that you can check the organisation is eligible to make an asset transfer request, and to make a request for ownership if appropriate (see chapter 5). The company number, charity number or registered number are also requested on the standard form, to provide for background checks.

8.12. If the organisation does not qualify as a community controlled body but has been designated as a community transfer body, or is one of a class of bodies which have been designated as community transfer bodies, they must explain this. Designation orders will be published online for reference.

### **E The land to which the request relates**

8.13. The request must provide sufficient information to be clear what land is being requested.

8.14. If the land is on your register of land, you can expect the community transfer body to copy those details. If not, they should provide similar details, ie the name by which the land or building is known, the street address (including postcode) if there is one, or a grid reference. If the request is only for part of a plot or a building it must be clear exactly what is requested. For example, a request for one building on a

larger site should identify the boundaries of the land required around it; any request for lease or use of part of a building should include details of any use of amenities required, for example storage, kitchens or parking.

8.15. Maps or drawings may not be necessary if the location and boundaries of the land requested are clear from the description. For rural land, or if only part of a piece of land or a building is being requested, a map is likely to be required to accurately identify the area being requested. If possible you should assist the community transfer body to provide suitable maps or drawings, for example by providing copies of any existing maps, directing them to sources of mapping information, or helping them to understand the level of detail required.

### **F, G, H, I, J Type of request, payment and conditions**

8.16. The request must state clearly whether it is for:

- ownership (under section 79(2)(a))
- lease (under section 79(2)(b)(i)), or
- other rights (section 79(2)(b)(ii))

8.17. A request for ownership must state the price that the community transfer body is prepared to pay for the land.

8.18. A request for ownership must state the amount of rent the community transfer body is are prepared to pay, the duration of the lease, and any other terms and conditions they consider should be included in the lease.

8.19. A request for other rights must state the nature and extent of the rights sought.

8.20. All requests should also include any other terms and conditions applicable to the request (section 79(2)(h)). For ownership, this is likely to include key terms which the community transfer body wishes to be included in the contract, in addition to the information included elsewhere in the request on the extent of the land, price and proposed use. This section need not be completed if the community transfer body does not wish to include any additional terms and conditions, and it is not required for a request to be accepted as complete.

### **K Reasons for making the request**

### **L Proposed use of the land**

8.21. The community transfer body should explain the reasons behind the project and why this land or building is necessary or particularly suitable for it. They should also set out how the land or building will be used and what activities, in general terms, will take place there. For example, the reason for making the request may be

to prevent a prominent building from falling into disrepair, or increase tourism to the area; the intention might be to use it as a visitor centre or community venue; more information would then be needed on the planned activities. In other cases the reason and use may be the same, for example where the intention is to develop a hydroelectric scheme or a community garden. This section should also set out any planned physical changes or development on the land.

## **M Benefits of the proposals**

8.22. This is one of the most important sections of the request, since the benefits of the community body's proposals are key to the decision on whether to agree to or refuse the request, as set out in chapter 10.

8.23. You should consider all requests in detail to understand the proposed benefits, but community transfer bodies are encouraged to set them out along the lines of the issues relevant authorities are required to consider, and with reference to intended outcomes. They are also encouraged to show how they might address any potential negative consequences, take account of any restrictions on the use of the land, and demonstrate the capacity of the organisation to deliver the project.

8.24. If possible, you should advise the community body at an early stage of any negative consequences likely to arise, and discuss whether these can be addressed or mitigated. If the land is subject to heritage or conservation designations, the community transfer body should show they have engaged with the appropriate regulators, and that their proposals support the Local Development Plan, if relevant.

## **N Funding**

8.25. The community transfer body must outline how they propose to fund the price or rent they are prepared to pay for the land, and their proposed use of the land. This should include any development costs, ongoing maintenance and the costs of activities.

8.26. In some cases this will be very straightforward, for example if the organisation's rent and incidental expenses are covered by the fees paid by members, or by volunteering, donations and fundraising. For large projects, more detail will be required, showing that the community transfer body understands all the costs associated with their proposals and how these will be covered. This may be through grants, loans, fees for activities, income from commercial operations, and so on. Community bodies should not be expected to have funding in place when the request is made, but they should have a clear idea of where they expect to get it.

## **O Community support**

8.27. The request must set out the level and nature of support for it within the community to which the community transfer body relates, ie the community defined

in the community transfer body's constitution. How the level and nature of support should be described will depend on the particular case, but could include evidence from a range of activities undertaken to engage with the wider community, such as public meetings, community surveys, community action planning or a charette, or community budgeting. The community transfer body may reference the National Standards for Community Engagement<sup>3</sup> to show that their engagement has been effective and inclusive. A full community ballot may be used, but is not required. The community transfer body will not have access to the assistance from the Scottish Government that is available for community right to buy applications, where a ballot is compulsory.

8.28. Community transfer bodies are encouraged to include information on the total number of people in their community and how many of them are members of the organisation to provide context for the level of support. Communities of interest may only be able to estimate this, using evidence such as the census, other surveys or information from national representative bodies.

8.29. The legislation only refers to support from the community which the body represents, but details of other support may also be provided. This could be, for example, from another local community or community of interest which the project will benefit, or from organisations such as a sport governing body or national umbrella body.

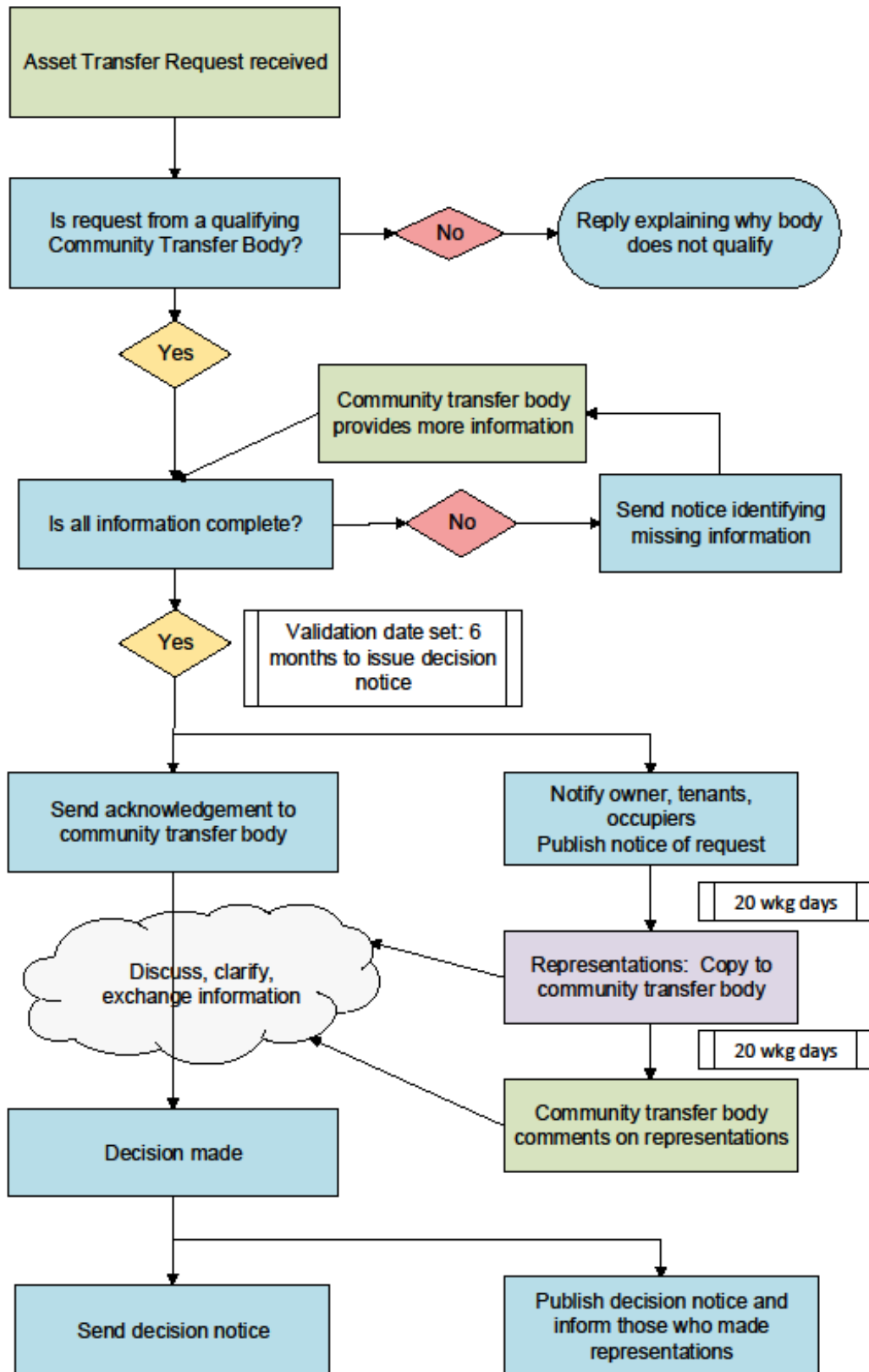
## **Signatures**

8.30. The standard application form requires two signatures from officers of the community transfer body, with their full names and addresses. This is not a requirement of the asset transfer legislation, but will be required by relevant authorities to undertake fraud prevention checks.

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<sup>3</sup> <http://www.scdc.org.uk/what/national-standards/>

Procedure following receipt of an asset transfer request



## **9. Procedure following receipt of an asset transfer request**

9.1. When you receive a request, the first thing to do is to check it contains all the required information, and that the organisation making the request qualifies as a community transfer body (and is eligible to make a request for ownership, if appropriate).

9.2. If the organisation making the request is not eligible to do so, technically it is not an asset transfer request and no further action is required under the legislation. As a matter of good practice, you should reply explaining in general terms why the organisation is not eligible, and directing them to the guidance on eligibility. If appropriate, you should highlight any specific failings in the body's constitution.

9.3. If the request does not contain all the required information you must send the community transfer body a notice saying what is missing. As set out in regulation 4(2) of the Procedure Regulations, this applies if the request is in writing and contains a minimum of the community transfer body's name and contact address, and a statement that it is an asset transfer request under part 5 of the Act. No further action needs to be taken until all the required information is received. It would be helpful to make clear in the notice that the request will not be progressed until it is complete. Depending on the content of the partial request, you may also want to direct the community transfer bodies to sources of support, or invite them to discuss their proposals with you.

9.4. Only outline information under each heading is required to accept a request as complete. You can seek further information at a later stage if you feel this is needed to support the decision-making process.

### **Power to decline repeat requests**

9.5. Section 93 of the Act allows a relevant authority to choose not to consider a request which is the same or very similar to a previous request which was refused. This applies if the new request relates to the same land or building, and seeks the same type of transfer, as a request made in the previous two years, which was refused. It does not matter if the new request is made by the same body or a different one. For example, if one community transfer body requests to lease a particular building, and is refused, and another body requests to lease the same building for very similar purposes within two years, the relevant authority may decline to consider that second request. On the other hand, if the second request was for transfer of ownership instead of a lease, the relevant authority would have to consider it. Declining to consider a request under these circumstances does not count as a refusal of the request and therefore is not eligible for appeal or review.

9.6. This provision is intended to help relevant authorities deal with repeated requests which are unlikely to have a different outcome. They can still choose to

consider a repeated request if they wish. If the community transfer body has worked to improve its proposal, or other circumstances have changed, or the new request is from an entirely different organisation, it may well be appropriate to consider it.

9.7. Where a repeated request is declined, you should write to the community transfer body to advise them of the situation and the reason for declining the request.

### **Acknowledgement**

9.8. Once you are satisfied that all the required information has been provided, you must send an acknowledgement to the community transfer body, as required by regulation 4(3) and (4). The acknowledgement must include the following information:

- the validation date – regulation 5 states that this is the date on which the last of the required information was received (the date the request was received if it was complete). This is the date from which other time limits will be calculated.
- an explanation of the timescale for you to issue the decision notice. As set out in regulation 10 and section 82(8), you must issue a decision notice within 6 months after the validation date, unless a longer period is agreed between the relevant authority and the community transfer body.
- information about the right to appeal to the Scottish Ministers or request a review, as appropriate. This is required at the outset because of the option to appeal if no decision is made within the time limit. The acknowledgement should set out who the appeal or request for review can be made to, according to the relevant authority to which the request is made, and the circumstances in which it can be made. It would also be helpful to provide details of the address to which an appeal or request for review should be sent.
- whether another asset transfer request has already been made to the relevant authority in respect of the same land (or part of the same land).
- whether the relevant authority considers that it is now prohibited from disposing of the land to any other person (see below).

9.9. You may also want to consider including in the acknowledgement information about the process by which your authority will make its decision on the asset transfer request, and any further support that will be provided to the community transfer body.

9.10. A model acknowledgment letter is provided on the Scottish Government website.

## **Publication of documents**

9.11. You must make copies of the asset transfer request and any documents or information accompanying it available to be viewed online, until the request process is completed. Any representations made about the request must also be put online.

9.12. In order to comply with data protection requirements, any personal information should be redacted from these documents before they are published.

9.13. It may be helpful for other community transfer bodies (and other relevant authorities) to maintain an archive of completed requests online. In particular, this will help community transfer bodies to know if previous requests have been made, and refused, for the same property.

## **Notification and representations**

9.14. Regulations 6 and 7 of the Procedure Regulations set out arrangements for other people to be made aware that an asset transfer request has been made, and of how they can make representations about it. This must be done as soon as practicable after the validation date (the date the completed request was received).

9.15. You must directly notify any tenant or occupier of the land the request relates to. This would include any group which has an agreement for regular use of the land or building. You must also notify the owner, if the relevant authority leases the land.

9.16. Notice of the asset transfer request must also be published online, and put up at the site. Regulation 7(2)(b) requires it to “be displayed at a public place in the vicinity of the land to which the asset transfer request relates”. You can delegate this to the community transfer body, or another agency, if you wish, to save staff having to travel to the site, but it is the responsibility of the relevant authority to ensure the notice is displayed.

9.17. If the request relates to a building or area of land in a settlement, the notice should normally be placed on the building or land, or on an object close to it. If it is a building open to the public, you may also want to put a copy somewhere prominent inside. However, it is more important that the notice is put up where interested people will see it than that it is on or adjacent to the land in question. It could be displayed in a village shop, on a community noticeboard or an information point in a car park – wherever local events and notices are normally advertised.

9.18. You can expect the community transfer body to publicise information about its proposals, and it will probably announce the fact that it has submitted a request, through social media, newsletters etc. However, it is the responsibility of the relevant authority to formally give notice that a request has been received and to invite representations.



9.19. Notices sent to tenants, occupiers and owners and those published online and near the land all require to contain the same information. They must:

- state that an asset transfer request has been made
- identify the community transfer body making the request and the land to which the request relates
- give a brief description of the nature of the rights requested and how the community transfer body propose to use the land
- say how the asset transfer request and associated documents can be inspected
- say how representations about the request may be made, and by what date. This must be at least 20 working days after the notice is given or published

The notice should also advise that all representations will be copied to the community transfer body for their comments, and published

9.20. A template and example notices are provided on the Scottish Government website.

9.21. If any representations are received in response to these notices, the relevant authority must send copies to the community transfer body and inform them how and by what date they can make comments about them. The date must be at least 20 working days from the date on which the copy is sent. Any personal information should be redacted from representations before they are copied to the community transfer body or published online.

### **Prohibition on disposal of land**

9.22. Once an asset transfer request has been made, the relevant authority is not allowed to sell, lease or otherwise dispose of the land it relates to, to anyone other than the community transfer body that made the request, until the whole process is completed. This is set out in section 84 of the Act. Subsection (11) provides that in these circumstances, any contract requiring the relevant authority to dispose of the property to any other person has no effect.

9.23. You should make sure that anyone dealing with property management will be aware of the fact that an asset transfer request has been made for a particular property, in case another approach is made for the same property while the process is underway. This might be done, for example, by putting a note on the property management system.

9.24. Subsections (4) to (10) of section 84 set out all the possible ways in which the asset transfer request process can come to an end. In summary, the process is completed when:

- a contract for the transfer is concluded;
- the request is refused and the community transfer body has followed all routes of appeal without success, or
- the community transfer body fails to take the next action in the process within the time required. For example, if it does not make an offer, or does not request a review or appeal if the request is refused.

9.25. There is no statutory provision for a community transfer body to withdraw its request.

9.26. Under subsection (12), the prohibition on disposal does not apply if, before the asset transfer request is made, the land has already been advertised for sale or lease, or the relevant authority has entered into negotiations or begun proceedings to transfer or lease the land to another person. In these cases, an asset transfer request can still be made, but it will not prevent negotiations or proceedings continuing with, or bids being made by, any other person.

9.27. There is no specific definition of “entering into negotiations”, but you should be able to show evidence of discussions that go further than a preliminary enquiry.

9.28. The Scottish Ministers can also make a direction to say that the prohibition does not apply. A request for a direction under section 84(13) must identify the land to which the asset transfer request relates, the relevant authority and the community transfer body, and must explain why you consider the prohibition on disposal should not apply.

### **Multiple requests for the same property**

9.29. Each asset transfer request that is received must be processed in line with the procedures and timescales set out above, even if further requests are received for the same land before the first has been concluded. There is no provision, for example, to allow the relevant authority to delay a decision on one request until it has considered another, unless the community transfer body making the first request has agreed to an extension of the timescale. However, if you are using a pre-application process, you may be able to agree with the community transfer bodies involved that all requests will be submitted at roughly the same time, allowing them to be processed in parallel. Ideally, all community transfer bodies interested in a particular property would work together to submit a single request, but this is not always practical.

9.30. Each asset transfer request that is received prohibits the relevant authority from disposing of the land to anyone other than the community transfer body making that request, until it has been completed (as described in paragraphs 8.11.). Where there are multiple requests for the same land, this could result in overlapping prohibitions. It is not considered that receiving and processing an asset transfer request would disapply the prohibition in terms of section 84(12), in respect of subsequent requests. Equally, the prohibition imposed by the first request would not prevent subsequent requests being processed, but the ultimate disposal of the land could not take place until all requests have been concluded, including any appeals.

9.31. If the relevant authority decides to agree to one of the requests, it may be appropriate to include in the decision notice that the agreement is conditional on the prohibition imposed by the other request(s) being lifted. An application can be made to the Scottish Ministers for a direction to disapply the prohibition if necessary.

9.32. As explained in paragraph 8.14., the prohibition on disposal does not apply if the land has already been advertised or negotiations for transfer have begun before any asset transfer request is received. In this situation it would be helpful to keep the community transfer body informed of the progress of that process, so they can understand how this may affect their request. The asset transfer request must be processed according to the legislation, but the decision would take into account the other offer(s) or negotiations and whether these would restrict the authority's ability to agree to the request.

## **10. Decision-making process**

10.1. To provide a robust decision-making process it is essential to bring together officers with key responsibilities within the authority, including property, legal, finance, and those with a focus on community development or community engagement. It may also be helpful to include, or obtain advice from, relevant colleagues in relation to the benefits that an asset transfer may provide, such as economic development or environmental improvements.

10.2. Relevant authorities with a remit focused on particular issues may find it helpful to seek advice from others, for example through the community planning partnership. This may be general advice or in relation to specific benefits included in a community body's proposals. Some of the proposed benefits are likely to relate to a specialist area on which advice may be required. For example a relevant authority may seek advice on assessing outcomes for mental health or on environmental issues.. Community planning partners may also be able to provide insight in relation to the local context. Some relevant authorities are planning to recruit a panel of external people with appropriate experience to advise on asset transfer requests, although the final decision must rest with the authority itself.

10.3. Each relevant authority will need to establish its own procedures for obtaining approval of decisions at an appropriate level, within the time limit required. Information on the process should be made available to the public, including who makes the decision and expected timings for each stage.

10.4. Dialogue between the relevant authority and the community transfer body should continue throughout the process. Relevant authorities can request clarification or more detail on any issues they feel are necessary for their decision. This will help to avoid situations where a request is refused on the basis of a lack of information which the community transfer body could have provided if they had been asked. Authorities should also take care that the type of information and level of detail expected is appropriate and proportionate to the individual request.

10.5. If the relevant authority considers at an early stage that they are likely to refuse the request in its current form, but could agree to an alternative proposal, you could discuss this with the community transfer body and suggest that they submit a new request. However, this must be entirely at the community transfer body's choice. They have a right to persist with the request they want to make and receive a formal decision, which is open to review or appeal.

### **Matters to be considered**

10.6. Section 82 of the Act states that, "where an asset transfer request is made by a community transfer body to a relevant authority ... the authority must decide

whether to agree to or refuse the request”. Under subsection (5), “the authority must agree to the request unless there are reasonable grounds for refusing it”.

10.7. It is not possible to give detailed guidance on what may be reasonable grounds for refusal, as this must be determined in the circumstances of each individual case. However, they are likely to include cases where the benefits of the asset transfer request are judged to be less than the benefits of an alternative proposal, where agreeing to the request would restrict the relevant authority’s ability to carry out its functions, or where another obligation on the relevant authority prevents or restricts its ability to agree to the request.

### **Benefits**

10.8. In reaching its decision the authority must consider the reasons for the request and the information provided in the request and in support of the request, and compare the benefits of the community transfer body’s proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request, or another proposal made by the authority, or by any other person. If the relevant authority does not consider the property to be surplus, continuing the existing use would be treated as an alternative proposal; if the property has been identified for disposal, disposal on the open market could be an alternative.

10.9. In assessing the benefits of the request the relevant authority must consider whether agreeing to it would be likely to:

- promote or improve
  - economic development
  - regeneration
  - public health
  - social wellbeing
  - environmental wellbeing, or
- reduce inequalities of outcome which result from socio-economic disadvantage

10.10. The authority must also make the decision in a manner which encourages equal opportunities and the observance of the equal opportunities requirements. While some of this may come under the heading of promoting or improving “social wellbeing”, it provides a focus for considering activities which may benefit particularly disadvantaged groups, or promote inclusion and understanding between different groups.

10.11. When comparing the benefits of other proposals to the benefits of the asset transfer request, the non-financial benefits of the other proposals should be

considered, where possible, as they are for the asset transfer request. The price offered for the transfer should also be considered alongside the non-financial benefits. In its simplest form, you should consider what outcomes could be achieved with any profit or savings that might be made, or what impact any financial loss might have, compared with the benefits offered by the community project or alternative proposals.

10.12. Further guidance on the assessment of benefits and price is provided in chapter 13.

### **Ability to deliver**

10.13. Considering whether a proposal is likely to achieve the benefits set out is not only a matter of whether the planned activities would lead to the suggested outcomes. It also requires an assessment of whether the community transfer body is able to successfully deliver the project, and make it sustainable. This should cover both funding and the capacity and governance of the organisation. Some issues to be considered might be:

- has the community transfer body identified all the relevant costs of the project or activities?
- have they identified appropriate and realistic sources of funding – for example, will they be eligible for any suggested grants, are any fees for activities affordable for their target market, do they have a viable business plan for any proposed commercial activities?
- where relevant, have they identified how the project will be funded in the longer term?
- do members have appropriate skills, experience and qualifications to deliver the project, or does the body have a plan for engaging people who do?
- does the community transfer body have suitable governance arrangements for the scale of the project?
- where relevant, do they have succession plans in place for recruiting new Board members / Trustees in future?

10.14. Consideration of these issues should always be proportionate and appropriate to the scale and type of project involved. A proposal to buy and redevelop a building to provide new facilities for a range of users will be a complex and long-term project which requires clear planning for several years and a range of professional skills. A proposal to provide sport activities for young people in school grounds in the evening may not need long-term planning, but the community body will still have to consider whether people with appropriate skills are available and

potential additional costs such as affiliation to governing bodies or Disclosure checks.

### **Relevant authority's functions**

10.15. The relevant authority must consider how any benefits relate to other matters the authority considers relevant, including, in particular, the functions and purposes of the authority. In many cases, the proposed benefits of an asset transfer request will contribute to achieving the relevant authority's outcomes, or to national outcomes more generally. However, there may be cases in which agreeing to the request would have an unacceptable impact on the relevant authority's ability to deliver its functions. This could be a direct impact, for example because the community activities would physically interfere with the relevant authority carrying out its operations, or require them to put alternative arrangements in place that substantially increase the costs. There may also be cases where the community transfer body's proposals conflict with a policy of the relevant authority. And affordability may be a factor, if the cost of the transfer would affect the authority's budget to the extent that it reduced its ability to deliver its functions, even after taking account of the value of the proposed benefits.

10.16. Where there is a direct impact on the relevant authority's operations, in some cases it may be possible to work with the community transfer body to make adjustments to accommodate both parties' activities. If the community body understands the difficulties they may be able to suggest innovative solutions. Alternatively, the relevant authority may be able to suggest other land in the area that the community body might use.

### **Obligations and restrictions**

10.17. Another matter to be considered is any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request, whether these arise from legislation or otherwise. For example, legislation may require a relevant authority to obtain special permission to dispose of certain property, or title conditions or planning restrictions may say that it cannot be used for certain purposes. The Act does not over-ride or alter any such obligations. They should be explained to the community transfer body at the earliest possible stage, as they may influence their decision on what property may be suitable for their needs.

10.18. If an obligation imposes an absolute ban on the transfer of the rights sought by the community transfer body, or on the use they propose for the land, that would be reasonable grounds for refusal. However, in many cases there are mechanisms available for amending or removing the restrictions. The relevant authority should consider the benefits of the asset transfer request first. If it would be inclined to agree to the request, and, if appropriate, considers it would meet the requirements

for removing the restrictions, the authority can then investigate the possibility of doing so. For example:

- If a lease prohibits subletting, the relevant authority could potentially ask the landlord if they would consider amending it in favour of the community transfer body. (This only applies if the landlord is not a relevant authority, or a company wholly owned by a relevant authority; otherwise the restriction in the lease is disapplied under the terms of section 92 – see paragraph 10.24.)
- If permission is required from the Scottish Ministers (or any other person) to transfer the rights requested, if the relevant authority considers the request should be agreed, they should prepare a case to seek permission for the transfer.
- In some cases an application to the courts may be required, for example if an asset transfer request relates to inalienable common good land. A proposal with strong support from the community is likely to strengthen the authority's case for disposing of the property.

10.19. In each of these cases, it may take some time to deal with the potential restriction on disposal. It may be necessary either for the relevant authority and the community transfer body to agree to extend the time allowed for issuing a decision notice, or for the agreement to the request to be conditional on the restriction being removed.

#### **“Other matters” and community support**

10.20. The final paragraph of section 82(3) requires the relevant authority to consider “such other matters (whether or not included in or arising out of the request) as the authority considers relevant”. One aspect that we would recommend relevant authorities consider under this heading is community support for the proposals and any potential impact on other community groups.

10.21. The relative importance of wider community support will depend on the proposed project. It is particularly important if the request is for ownership or development of a key site, or will change the delivery of services, and which therefore affects people in their everyday lives. It may be less important for a lease of office space or an unobtrusive renewable energy scheme, for example, although any asset transfer could raise questions of value for money and equal treatment of different groups.

10.22. There are often differences of opinion within communities, and you should not expect unanimous support for a proposal. However, one of the intended benefits of community ownership and community-led activity is to increase community cohesion and resilience. A scheme that attracts substantial opposition and causes



division in the community may not have a net benefit. It could also result in fewer people becoming involved or using the services.

10.23. If the request is from a body representing a community of interest, they should be encouraged to show how they have engaged with the geographic community in the area where the asset is located. A community of interest may be a subset of the local community, such as an equality group or sports club, or it may be drawn from a regional, national or even international base. In either case, the views of local residents who are not part of that community of interest should be considered. Equally, a proposal from a geographic community may reference support from communities of interest who may benefit.

### **Lease restrictions**

10.24. If the request is for land which is leased to the relevant authority by another relevant authority, in certain circumstances restrictions in the lease do not apply, as set out in section 92 of the Act. The circumstances are that:

- the land is leased by one relevant authority, or a company wholly owned by a relevant authority, to another relevant authority
- the request is for lease or a right of occupancy of the land, and
- no other person is entitled to occupy the land.

10.25. In this case, any restrictions in the lease which restrict the ability of the relevant authority to sub-let or share occupancy of the land, or restrict how the land may be used, do not prevent the relevant authority agreeing to lease the land to the community transfer body or allow them to occupy the land. This does not affect any restrictions on the power of the relevant authority to assign or transfer rights and liabilities under the lease, and the relevant authority continues to be subject to any obligations under the lease. For example, if the lease said sub-letting was not allowed, the relevant authority could agree to an asset transfer request for a sub-let, but would still be responsible to the landlord for any maintenance requirements included in the lease between them.

## **11. Price, Valuation and Non-financial benefits**

11.1. The Act does not say how much should be paid to purchase an asset or in rent, whether it should be at market value or at a discount. The community transfer body has to state in the asset transfer request how much they are prepared to pay, alongside the benefits the project will deliver, and the relevant authority has to decide whether to accept that price. This can be a difficult area for both sides. The Scottish Government brought together a Short-Life Working Group to look at the issues of Valuation and Assessment of Non-Financial Benefits, and they have developed the guidance in this chapter. Details of the group's membership and a link to its papers are provided at Annex B.

11.2. All relevant authorities have a duty to secure Best Value in their operations, including when disposing of or letting property. However, it has long been recognised that best value does not always mean the highest possible price, and all authorities have the ability to dispose of property at less than market value where there are wider public benefits to be gained. This is set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010, and in the Scottish Public Finance Manual for other relevant authorities. It is a question of balancing the financial and non-financial impacts, both positive and negative, of the different options.

11.3. The likely price of the asset is something the community transfer body will need to consider at an early stage in developing its proposals, along with the initial and ongoing costs of the project. It will be helpful for relevant authorities to give an indication of their expectations in terms of price at an early stage in discussions, if possible. Community transfer bodies should not assume that asset transfers will be at a nominal sum.

11.4. For purchase or lease, both parties are likely to need a formal valuation for accounting and funding purposes. Chapter 12 explains how this could be done on a joint basis.

11.5. Most asset transfer requests are for property which is unused or to be closed. If a request is made for a building or site which is in use, there may be costs to the relevant authority for relocating staff and services, which may offset the value of the non-financial benefits of the proposal. On the other hand, there may be savings from the community transfer body taking over maintenance or other responsibilities. Similarly, a request for use of a property outside normal hours, for example, may incur additional costs such as safety and security arrangements. It may be possible to make arrangements with the community transfer body to reduce these costs and make the transfer more feasible.

11.6. If the community transfer body decides to offer a price that is less than the market value, the relevant authority will need to assess whether the non-financial benefits offered by the proposals justify that reduced price. Chapter 13 provides

guidance for relevant authorities in doing this. Chapter 14 deals with circumstances where the relevant authority may wish to include arrangements to protect any discount in case the proposed benefits are not delivered.

### **State Aid Considerations**

11.7. All asset transfers must comply with state aid rules<sup>4</sup>. A disposal at less than market value may constitute state aid, if it provides an economic advantage to a trading entity. There are four key tests<sup>5</sup> that need to be met in order to establish whether a measure constitutes state aid, this includes whether any intervention is likely to **affect trade between Member States**.

11.8. The relevant authority will have to consider whether any reduction from market value is allowed under the State Aid Rules. However, if any assistance is found to have breached the Rules, it is the organisation that received the assistance that has to pay it back, so it is important for clarity on both sides of the request. There are also “de minimis” levels which limit the amount of aid that can be received by an organisation over any rolling 3-year period. Where a discount involves state aid the community transfer body will be required to demonstrate that this will not exceed state aid limits.

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<sup>4</sup> <http://www.gov.scot/Topics/Government/State-Aid>

<sup>5</sup> <http://www.gov.scot/Topics/Government/State-Aid/About/state-aid-tests>

## **12. Obtaining a joint valuation of the asset**

12.1. The Act does not say how much should be paid to rent or purchase an asset, and there is no requirement to obtain a valuation for the purposes of the Act. However, both the relevant authority and the community transfer body are likely to need to understand the “market value” of the asset, for accounting, borrowing or funding purposes, and to ensure transparency about the amount of any reduction from market value. A market value is also required for Best Value and State Aid assessments.

12.2. To reduce overall costs and provide a common starting point, we would encourage the relevant authority and community transfer body to obtain a joint valuation, and to agree that this will give the figure on which discussions will be based. If at any stage the relevant authority and the community transfer body are unable to agree on the approach, they may need to obtain separate valuations instead.

### **What is “market value”?**

12.3. Market value is an important measure which is used widely for financial accounting purposes as well as in property transactions. The concept is set out in International Valuation Standards and incorporated into the professional standards set out by the professional bodies governing valuers, such as the Royal Institution of Chartered Surveyors (RICS) Valuation – Professional Standards (known as “the Red Book”). Valuers who are suitably qualified to practice in Scotland are required to comply with these professional standards.

12.4. Market Value is currently defined in the Red Book as “the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.”

12.5. Market Rent is currently defined in the Red Book as “The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm’s-length transaction after proper marketing where the parties had each acted knowledgeably, prudently and without compulsion”.

12.6. These definitions may be revised from time to time. The most up-to-date version should always be used.

## **When should the valuation be undertaken?**

12.7. There are two points within the process where discussions on the value of the property are needed:

- Stage 1- initial enquiry. When the community transfer body requests information about the property, if an approximate indication of the market value is known to the relevant authority this should be made available to the community body. This should be caveated to the extent that it is an indicative value only, and it may be given as a range of values. This would be very helpful to community bodies, particularly where they are considering options across more than one property.
- Stage 2 – confirmed proposals. Once the community transfer body has confirmed their interest and the property has been clearly defined, then the formal assessment of market value should be instructed. This is likely to be prior to the date of the Asset Transfer Request, during pre-application discussions. If the valuation takes place after the request is received, the community transfer body may wish to revise their offered price on that basis, or a revised price may be included in the decision notice.

12.8. The formal valuation can be undertaken when the relevant information about the property has been assembled. This includes defining the exact boundaries, layout plans, information about the property, legal rights and burdens, etc. In the event that material information is unavailable when the valuation is undertaken then it may require to be re-valued at a future date. Where that is the case, where possible, this should be made clear to both parties and the valuer at that stage.

12.9. The valuation report will qualify how long the valuation is valid. This may be only at the date of the report, or may be for some time (typically six months) unless market circumstances change or further information comes to light which would cause a revised opinion of value. Despite this, when agreeing to instruct a valuation jointly, the relevant authority and the community transfer body should agree the time period within which they are able, or are prepared, to proceed to conclude the transaction at a price based upon the valuation to be obtained, taking into account the time required to process an asset transfer request. Any such agreement will nonetheless be subject to any material change within the agreed time period which may affect the valuation and require a revaluation. The community transfer body should also consider the requirements of funders or other organisations involved, in relation to the date of the valuation.

## **Who should value the property?**

12.10. Stage 1 valuations are likely to be provided by an in-house Estate Management team, or retained advisers. The valuation should be provided by the

relevant authority with no costs charged to the community transfer body, provided the requests are reasonable in nature. This value should be provided from existing information, where appropriate information is available, and should not require a valuation to be instructed. It may be provided on the basis of a range of values.

12.11. Stage 2 valuations should be provided by either

- a) the Valuation Office Agency (VOA) (the “District Valuer”), or
- b) a suitably qualified and experienced independent valuer, registered with an appropriate professional body (such as RICS).

12.12. For Stage 2 valuation, if the relevant authority and the community transfer body agree to obtain a joint valuation, they must first agree who will be asked to determine the market value. Either party may provide additional information to the valuer if they consider it relevant to the assessment of market value, and this information must be disclosed to the other party. However, it is for the valuer, acting as an independent expert, to determine what information is pertinent in their assessment of value and they may choose to disregard any such submissions, if they deem it appropriate.

#### **How should the valuation be instructed?**

12.13. If a joint valuation is to be obtained, the parties should issue a joint letter of instruction to the valuer. This must state clearly the basis of valuation and the extent of the property. The wording of the letter is to be agreed between the parties. A suggested template letter is provided below, based on the information required under Terms of Engagement in the Red Book). The draft letter is a guide only and its use is not mandatory.

12.14. The parties may instruct the valuer to make special assumptions in relation to the valuation. If the valuation is for lease, they should set out the main terms of lease required, or provide sufficient information to enable the valuer to form an opinion on the nature of the rental market relating to that type of property in that area.

12.15. The parties should share the cost of a joint valuation equally.

#### **The basis of value**

12.16. The basis of value in most cases will be the market value as defined in the Red Book. This valuation should include any development potential and any rights or burdens that run with the land/property as well as any reduction in the value of any remaining land as a result of the fact that only part of the land is being acquired by the community body.

12.17. Whilst it is expected that the vast majority of valuations will be on the basis of market value, in some situations it may not be appropriate to use the market value of an asset but instead to use a different basis of value. The situations where alternative bases of valuation would be used are likely to be very specific, possibly where a specialist building for which no market would otherwise exist, is to be transferred subject to a restriction on use which prevents it from being used for another purpose. The parties must agree the most appropriate basis in order to instruct the valuer.

12.18. Whatever basis of valuation is used to assess the value it must be one of the recognised bases set out in the Red Book.

**Suggested Template for joint letter of instruction to assess value of asset subject to Asset Transfer**

Dear Sir,

**[Name of Relevant Authority]**

**[Name of Community Transfer Body]**

The above parties wish to jointly appoint you to provide a valuation of the property **[description of property]**, shown in heavy black outline on the attached plan ref xx. The valuation is required to assess the value of the property for its possible sale to **[Name of Community Transfer Body]**.

The valuation should be carried out in accordance with the RICS Valuation Professional Standards (The 'Red Book'). The basis of value will be **[market value]/[market rent valuation]/[other agreed basis of valuation]** as defined in The 'Red Book'.

This valuation should include any development potential, any rights or burdens that run with the land/property (as provided by **[Name of relevant authority]**) and such other agreed facts as are set out. Please set out clearly details of your assumptions.

**[ (for lease)** The lease terms to be assumed should be those that reflect current practice in the market in which the property is situated. Please set out clearly the principal lease terms assumed when providing your opinion of market rent. **]**

When writing to confirm this instruction, please advise the fee for undertaking this work.

In order to arrange access to the property please contact **[contact name]**, Tel **[phone number]**. We confirm that the parties are to be equally responsible for the valuation fees and request that you forward an invoice in respect of half those fees to our office, and the other half to **[contact details of other party]**.

Annex 1 – Joint statement of Agreed Facts (this should include items such as area / lease terms / condition report / planning situation / burdens / restrictions on title / handling of fixtures and fittings.)

Annex 2 – Further information provided by the RA (not forming part of the agreed facts)

Annex 3 – Further information provided by the community body (not forming part of the agreed facts)



## 13. Assessing asset transfer requests

### Introduction

13.1. When the price offered in an asset transfer request is less than the market value of the property, the relevant authority will need to consider whether the proposed benefits to be delivered by the community transfer body justify the proposed discount (which will be accounted for as a “gift”). This will be based solely on the analysis of the information included in the request. The benefits of the request should be proportionate to the value of the asset and the level of discount, with an appropriate level of information to support the application. Any decision to transfer an asset must represent good use of public resources.

### Criteria for Assessing Requests

13.2. A way to demonstrate resources are being put to good use is to demonstrate Best Value<sup>6</sup>. Best Value is the requirement to make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between effectiveness and economy. It also requires due regard to equal opportunities requirements, and to contribute to the achievement of sustainable development.

13.3. There are seven Best Value themes (see the table at page 58) and public bodies across Scotland have a duty to secure Best Value for public money and can sell, or lease, at less than market value where there are wider public benefits to be gained from a transaction. In making a case for the transfer of an asset, the Best Value themes will be evident, to a greater or lesser extent, in the community transfer body and the related benefits that will accrue in pursuing positive outcomes for a more prosperous and fairer Scotland. The matters which the relevant authority must consider include the following types of benefit:

- Economic development
- Regeneration
- Public health
- Social wellbeing
- Environmental wellbeing
- Reducing inequalities of outcome from socio-economic disadvantage
- Any other benefits that might arise through the alternative use of the asset.

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<sup>6</sup> <http://www.gov.scot/Topics/Government/Finance/spfm/BestValue>

13.4. Asset transfer at less than market value is justified when these additional benefits empower communities and align with local and national priorities to enable the delivery of Best Value across the public sector as a whole. Such benefits are likely to align with one or more of the Scottish Government’s National Outcomes<sup>7</sup>, which all Scottish public authorities are required to have regard to in carrying out their functions (under Part 1 of the Act). They may also contribute to the relevant authority’s policy objectives or local priorities determined through Community Planning, but the value of benefits should be judged on a broad basis, not only in relation to the particular authority to which the request is made.

**Considering the Request**

13.5. The information provided in the asset transfer request should demonstrate that the project has clear objectives, including the projected outcomes and impacts sought by the community transfer body alongside any associated dependencies, constraints and risks identified. The benefits of the request should be proportionate to the value of the asset and the level of discount.

13.6. Each one of the seven Best Value themes should be explored with the evidence provided used to evaluate the strength of the case being made, including the sustainability of the proposal in the longer-term (see the table at page 58). The request must also include the benefits that will be delivered as part of the proposal (see paragraph 13.3) which can come in a variety of forms:

<b>Benefit</b>	<b>Example</b>	<b>Assessment</b>
Financial	Reduction in public sector costs or enhancement of provision due to the proposal.	e.g. the costs associated with volunteers’ time or where intervention can reduce pressure on municipal services through the people that can be reached, such as alleviating alcohol/drug/ smoking dependency.
Outcomes - quantitative	Contribution towards local or national priorities e.g. improved standards of healthcare; contribution towards alleviating homelessness; supporting local employment etc.	e.g. the increase in local engagement in physical activity for a particular group or groups; the reduction in numbers of homeless through intervention/advocacy; the hours of vocational training provided to help develop skills that are in demand.

<sup>7</sup> <http://www.gov.scot/About/Performance/scotPerforms/outcome>

Outcomes - qualitative	Improved community cohesion; enhanced local services etc.	e.g. the improvement in local wellbeing from reducing anti-social behaviour; the increase in participation from a marginalised group or groups, such as providing online access or financial independence.
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13.7. In reviewing each request the following matters, though not exhaustive, should be considered:

- a) Value to relevant authority in existing use
  - feasibility and cost of relocation of services elsewhere
  - potential revenue savings arising from transfer
- b) Value for alternative use/redevelopment
- c) Value for proposed and other community purposes
- d) Level of community benefits
  - extent of community served
  - Nature of benefits to be delivered
  - links to relevant authority’s corporate priorities and outcomes
  - community need/demand for the services
- e) Likelihood that benefits will be delivered over a 5-year period
  - strength of organisation
  - sustainability of business plan/project
  - sources and level of funding support
- f) Impact of project failure
  - to surrounding local environment
  - to reputation of the parties
  - to the service users/relevant authority’s objectives

13.8. The request will then be assessed in terms of the evidence provided:

<b>Evidence</b>	<b>Overview</b>
Very strong	Governance and financial arrangements are strong and sustainable. Best Value characteristics are evidenced and contained throughout the overall approach. Related projected benefits are very robust and demonstrate value for money: suitability, effectiveness, prudence, quality, value and the avoidance of error and other waste.
Strong	Governance and financial arrangements are sound and sustainable. Best Value characteristics are in evidence in the proposal. Related projected benefits are demonstrated well and represent value for money.
Moderate	Governance and financial arrangements are in place and acceptable. Best Value characteristics have been considered as part of the proposal. Related projected benefits are acceptable and could lead to value for money.
Weak	Governance and financial arrangements are weak. Best Value characteristics are not well demonstrated in the proposal. Related projected benefits are not based on robust information and demonstrates questionable value for money.
Poor	Governance and financial arrangements are poor. There is little evidence of Best Value characteristics in the proposal. Related projected benefits are ill defined and/or unrealistic and do not demonstrate value for money.

13.9. The strength of the proposals will then be considered against the financial implications of any decision both for short-term budget planning and long-term asset strategies. This will include the consideration of the current use of the asset and any consequent implications that could arise from the transfer of the asset. A larger discount will require a stronger case to be made with an appropriate level of benefits demonstrated effectively.

**Asset Transfer Request Recommendation**

13.10. Following a detailed review and assessment of the information provided in an asset transfer request, a recommendation can then be made on the strength of the case to the relevant accountable officer. It may be appropriate for a relevant authority to consider weighting the various matters in its consideration of an asset transfer request in order for it to reach a clear judgement.

13.11. Depending on the nature of a request, expert opinion may need to be sought to assess effectively the financial implications, the Best Value considerations and/or the proposed benefits.

13.12. The community transfer body needs to provide a proportionate request that demonstrates clear benefits with the appropriate level of information to support the application – commensurate to the value of the asset and the level of discount.

13.13. Any asset transfer request should be assessed alongside any other proposals for the related asset to enable a Best Value judgement to be made. This will be a judgment that takes into account the financial implications alongside the wider benefits that will accrue in pursuing local or national priorities to deliver improved outcomes for Scotland.

Asset Transfer Guidance for Relevant Authorities – Draft Final

Best Value Theme	Summary	Information Required
Vision and Leadership	An organisation will have in place a clear vision and plan for what it will do to contribute to the delivery of improved outcomes for Scotland. This may be linked to one or more local or national priorities e.g. the Scottish Government’s National Outcomes.	A clear plan for achieving the intended outcomes, ideally showing links to local or national priorities. Members of the community transfer body would also show that they have the relevant skills and experience to deliver the intended objectives.
<ul style="list-style-type: none"> <li>Effective Partnerships</li> </ul>	An organisation will show how it, and its partnerships, provides a collaborative approach to the challenges that communities face.	The detail of any partnerships in place to help ensure successful delivery of the intended benefits. Community support is vital and can be shown through a variety of metrics such as surveys, consultations or ballots.
<ul style="list-style-type: none"> <li>Governance and Accountability</li> </ul>	An organisation will be able to demonstrate structures, policies and leadership behaviours that support the application of good standards of governance and accountability.	An outline to illustrate that the appropriate structures and policies are in place to help ensure success in the longer-term.

Asset Transfer Guidance for Relevant Authorities – Draft Final

<ul style="list-style-type: none"> <li>• Use of Resources</li> </ul>	<p>An organisation will show how its effective management of all resources (including staff, assets, and information) is contributing to the delivery of specific outcomes, highlighted in the national outcomes.</p>	<p>Explain how the body’s current and future resources will be used as part of a medium to long term plan (5-10 years). This could include the numbers of employees or volunteers and the maintenance of any asset. This could also include the funding requirements of the group and the sources of funding already in place.</p>
<ul style="list-style-type: none"> <li>• Performance Management</li> </ul>	<p>An organisation will ensure that robust arrangements are in place to monitor the achievement of its desired outcomes as well as any reporting arrangements.</p>	<p>Outline the way in which a community transfer body will be able to monitor the achievement of its objectives, whether that be recording volunteers time or the amount of benefit achieved as part of the overarching vision. To demonstrate openness and transparency it will be important to report performance to the community.</p>
<ul style="list-style-type: none"> <li>• Sustainability</li> </ul>	<p>An organisation will demonstrate an effective use of resources in the short-term and an informed prioritisation of the use of resources in the longer-term in order to contribute to sustainable development. The goal of Sustainable Development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations.</p>	<p>There are five broad principles of sustainability:</p> <ul style="list-style-type: none"> <li>• promoting good governance;</li> <li>• living within environmental limits;</li> <li>• achieving a sustainable economy;</li> <li>• ensuring a stronger healthier society; and</li> <li>• using sound science responsibly.</li> </ul> <p>A community transfer body could demonstrate how its future funding or self-financing arrangements are to be achieved. Any proposal could also include any positive impact on the natural environment.</p>
<ul style="list-style-type: none"> <li>• Equality</li> </ul>	<p>An organisation will demonstrate that consideration of equality issues is embedded in its vision and strategic direction and throughout all of its work.</p>	<p>The community transfer body should establish that the different groups within the community have had their different needs taken into account. Any request should include where a proposal may be reducing inequalities of outcome from socio-economic disadvantage.</p>

## 14. Use of conditions to protect discount

14.1. As explained in previous sections, public sector organisations are required to achieve Best Value in their property transactions. In the case of asset transfer to community bodies, disposal at less than market value, or with other support or concessions, may be justified by reference to the expected benefits to be delivered by the project. In that situation, relevant authorities sometimes seek to protect themselves against the risk that the benefits may not be delivered by including clauses in the contract requiring some form of restitution if the project fails.

14.2. It is for relevant authorities to determine whether it is appropriate to include such conditions in the contract (and for community transfer bodies to decide whether to accept the transfer on those terms). The aim of this guidance is to ensure that, if conditions are used, it is done in an appropriate and proportionate way. This form of protection may be supplemented by maintaining relationships with the community transfer body and supporting it to develop its capacity and deliver the project effectively.

14.3. Any conditions which the relevant authority proposes to impose to protect discount should be included in the decision notice, in sufficient detail that the community transfer body is able to decide whether they are acceptable or not. As a result, the community transfer body could seek to challenge them through the review and appeal process.

14.4. Where ownership of the asset is transferred, the main ways of protecting the discount are:

- where a reduced price was agreed in recognition of the benefits to be delivered, the community body may be required to repay the difference in price if the benefits are not delivered.
- where the price was based on a lower valuation for a particular use, conditions may be imposed to return any increase in value to the authority, if the use of the property is changed or the expected benefits are not delivered.
- if the property itself is important to the community, for example due to its heritage or location, arrangements may be made to enable the authority to recover the property if it is no longer used by the community body for the agreed purpose (or the community body is wound up).

14.5. The usual triggers for the implementation of these protections are if the project fails, the community transfer body is wound up, or it seeks to dispose of the property, either by sale or lease, for a purpose other than was expected at the time of transfer. The terms set out in the contract must be clear, setting out the trigger points for the condition to be activated and the basis for calculating any repayment.



14.6. Relevant authorities should note that the constitution of a community transfer body must include provision that its surplus funds or assets must be applied for the benefit of the community. A community transfer body eligible for ownership must have provision that on winding up any surplus property, after the satisfaction of liabilities, passes to another charity or community body (the details depend on the legal form of the community transfer body). This means that any property acquired by asset transfer cannot be used or sold for the private profit of the members of the group. A community transfer body's constitution could, however, allow property to be sold to raise money for the group's activities, if the property is no longer needed or appropriate for delivering those activities. In some cases this is a planned part of the original proposals, that part of the land will be sold to provide funding for other developments, and any conditions would need to recognise this.

### **Mechanisms used**

14.7. A range of legal mechanisms are used by authorities seeking to protect their interests, including standard securities, and minutes of agreement, which may contain a range of provisions and be linked to standard securities. Some relevant authorities also have powers to create certain types of real burden on title, under the Title Conditions (Scotland) Act 2003. A different range of options will be needed to reflect the individual circumstances of each case.

14.8. Any relevant authority seeking to create a real burden should consider carefully whether it will be appropriate and effective in achieving the desired result.

Guidance is available from Registers of Scotland

<https://rosdev.atlassian.net/wiki/display/2ARM/Types+of+Personal+Real+Burdens+-+Real+Burdens+Part+1>

14.9. In most asset transfer cases, there will be other organisations providing funding to the project in addition to any concession given by the relevant authority. Like relevant authorities, funders have a responsibility to ensure that their grants are used effectively and in accordance with the purpose for which they are granted, and they seek to secure this through a range of legal agreements. Where there are multiple contributors each requiring security for their investment then there is likely to be the need for a ranking agreement so that each party understands its position should the project fail, recognising that such a position may not enable each party to recover in full what it has funded.

14.10. OSCAR has confirmed that protective mechanisms as described above do not conflict with the requirements for charities. The charity's trustees would need to be satisfied that the arrangements were in the best interests of the charity before agreeing to them. However, on winding up, such arrangements would be dealt with as liabilities or contractual obligations to be settled before any remaining assets are distributed for charitable purposes.

14.11. If the relevant authority has a long-term interest in retaining the property, or does not have the power to sell it, a lease may be appropriate. Long leases (which can be up to 175 years in Scots law) are common for commercial property and may be appropriate for community bodies in such cases. Shorter leases may also be appropriate for a community body that wants to develop its capacity before taking on the responsibilities of ownership. However, relevant authorities should keep in mind the Scottish Government's ambition to increase community ownership, and the fact that key funding programmes may not provide grants for leasing.

### **Proportionality**

14.12. Any mechanisms used to protect the relevant authority's interest must be appropriate and proportionate. Excessive requirements for repayment or conditions on development or change of use could make a project unviable, or restrict the ability of the community transfer body to increase its capacity and develop new projects over time. Proportionality should take into account:

- the value of the concession granted
- the scale of the authority's contribution within the overall project, and
- the time within which benefits are expected to be delivered.

14.13. In some cases the contribution provided by funding bodies may be substantially greater than the value of the concession granted by the relevant authority, or even greater than the value of the property, especially when there is significant redevelopment or new-build planned. Any mechanisms used should therefore recognise the scale of the relevant authority's interest within the overall project.

14.14. The duration of the protection mechanism should reflect the amount of discount compared to the expected benefits. It may be appropriate for the amount to be returned to reduce over the period within which the benefits are expected to be delivered. Any mechanism which restricts the use of the property should take account of the community body's need to develop in the longer term; for example, it should not last longer than the expected remaining life of a building which is transferred.

14.15. Authorities must also consider the level of risk that the benefits will not be delivered, and how effective the chosen mechanism is likely to be in enabling the authority to recover its investment. If the risk of non-delivery is considered to be particularly high, it may be necessary to revisit the decision to agree the asset transfer request. (Any conditions on the transfer should be included in the Decision Notice, and therefore considered before the decision to agree the request is final.) The community body may need to provide more assurance of its ability to deliver, or more support may need to be provided. In the case of a project failure where it is not

possible to recover the full amount funded, a robust, documented process will help to show that the initial decision was taken appropriately.

### **Collaboration and monitoring**

14.16. It will often be helpful for the relevant authority to work directly with funders to agree a balance of legal mechanisms to secure the interests of all those involved. There can be misunderstandings about the requirements of different organisations which are best clarified by making direct contact. While these discussions are likely to take place between lawyers, community bodies should be reassured that the aim is to produce a better result for them, with fewer overlapping conditions.

14.17. Where any mechanism is put in place, by a relevant authority or a funding organisation, to ensure that benefits are delivered or property is used for a particular purpose, monitoring of those requirements is also essential. If difficulties arise with a project, support may also be necessary to help the community body get back on track. Where there are several organisations with similar interests, it may be possible to establish an agreement whereby one partner undertakes monitoring on behalf of all, providing other partners with sufficient confidence to reduce the need to impose multiple protective mechanisms. This would also benefit the community body, in reducing duplication of monitoring.

## 15. Decision notice

15.1. Having made its decision, the relevant authority must issue a decision notice to the community transfer body, under section 82(7) of the Act, setting out its decision and the reasons for it. This must be done within six months from the validation date, as prescribed in regulation 10 of the Procedure Regulations, or a longer period if agreed between the relevant authority and the community transfer body. If no decision notice is issued within this time, the community transfer body has the right to request a review or appeal to the Scottish Ministers, as appropriate.

15.2. The decision should not be unnecessarily delayed. It may be possible to make a decision in less than six months if the request is straightforward or there has been substantial discussion with the community transfer body before the request is submitted – as little as three months has been suggested. On the other hand, a longer period may be required for complex requests or where another process is required to remove a restriction on the relevant authority. You should advise the community transfer body of any potential delays at the earliest opportunity, and seek their agreement to an extension to the time period. It may be helpful to assess the complexity of a request and give the community transfer body an indicative decision date at the beginning of the process, for all cases. An extension should always be agreed before the prescribed (or previously extended) period expires.

15.3. The information to be provided in a decision notice is set out in sections 82(7) and 83(2) of the Act, and regulation 11 of the Procedure Regulations. It must do the following:

- A. state the date on which the asset transfer request was made
- B. identify the community transfer body which made the request
- C. identify the land to which the request relates
- D. set out the authority's decision to agree to or refuse the request
- E. set out the authority's reasons for its decision
- F. contain notification of the right of appeal or review, how an appeal or application for review may be made, and the date by which it must be made.

and if the request is agreed:

- G. specify the terms and conditions on which the authority is prepared to transfer ownership, lease the land or confer the rights requested
- H. state that, to proceed with the process, the community transfer body must submit an offer,

- I. specify the period within which the offer must be submitted (this must be at least 6 months from the date of the decision notice)

15.4. A template for a decision notice is provided on the Scottish Government's website.

### **A, B, C – date of the asset transfer request, community transfer body and land to which the request relates**

15.5. This information is simply to identify the request to which the decision notice relates.

### **D, E – the authority's decision and reasons**

15.6. The requirement for the relevant authority to give reasons for its decision is a key part of the legislation. An asset transfer request must be agreed unless there are reasonable grounds for refusal: it is the decision notice that will set out those grounds, and if the community transfer body does not believe they are reasonable they may appeal or seek review of the decision. In particular, if a request is refused because an alternative proposal is preferred, the decision notice would need to describe the alternative proposal and how it was considered to provide greater benefits. This should be as transparent as possible and reasons should be given for any key information that is withheld, for example on grounds of commercial confidentiality. The decision notice should be equally clear if the request is refused because of deficiencies in the community transfer body's case.

15.7. If the request is agreed, the reasons may simply be that there were no reasonable grounds for refusal. However, if there were alternative proposals for the property, or objections to the transfer, the reasons might set out why the community transfer body's proposals were favoured.

### **F. Notification of the right of appeal or review**

15.8. As with the acknowledgement letter, the decision notice should advise the community transfer body of the type of appeal or review that is available to them, depending on the relevant authority to which the request is made. At this stage it can be more detailed, taking account of the decision which has been made. You should explain the circumstances in which the appeal or application for review can be made, ie, if the request has been refused, or if it has been agreed, in case the terms and conditions are significantly different from those in the request.

15.9. You should say who the appeal or application for review should be made to, with the address it should be sent to, and refer the community transfer body to the guidance on how to make the application. You should also give the date by which the application must be made – this is 20 working days beginning with the date of the decision notice.

## **F. Terms and conditions for transfer**

15.10. The terms and conditions (including price or rent) on which the relevant authority would be prepared to agree to the transfer may be the same as or different from, any terms and conditions set out in the request, or may add to those in the request. However, if they are significantly different the community transfer body may apply for a review or appeal against them.

15.11. The terms and conditions set out in the decision notice form the basis of the offer to be made by the community transfer body, and subsequent negotiations to conclude the contract for transfer. They should therefore be detailed enough for the community transfer body to decide whether or not they are willing to agree, and to write a meaningful offer. The terms and conditions set out in the request should cover any issues that are key to the community transfer body's proposal; those set out in the decision notice should add anything the relevant authority considers essential. They should also clearly include anything that may affect the community transfer body's ability to deliver their proposals or secure funding, such as any restrictions on use or conditions requiring repayment if benefits are not delivered.

15.12. The decision notice may be conditional on a range of factors, such as the community transfer body securing funding, planning permission or confirmation of charitable status.

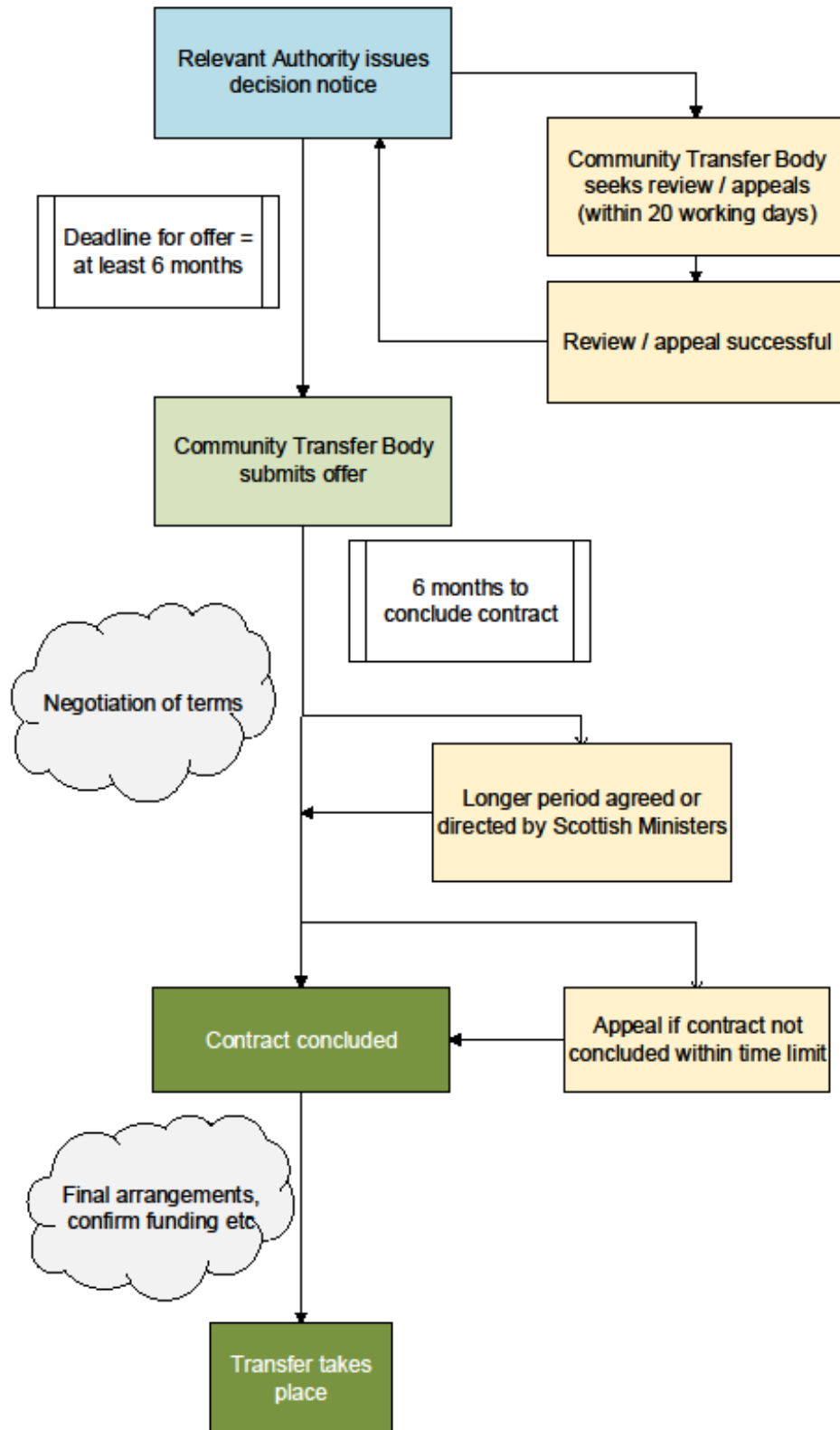
## **G, H. Requirement to submit an offer, and date**

15.13. As the next stage in the process, if the community transfer body wishes to proceed, it must submit an offer to the relevant authority. This offer must reflect the terms and conditions in the decision notice, and may include any other reasonable terms and conditions that are necessary or helpful to secure the transfer of the rights requested in a reasonable time. The decision notice must set out this requirement, and give the date by which the offer must be submitted. It is for the relevant authority to determine that date, but it must be at least 6 months from the date of the decision notice.

## **Notification and Publishing**

15.14. The decision notice must be sent to the community transfer body at the contact address, and published online. The relevant authority must inform anyone who made representations (and provided an address) of its decision and where the decision notice can be seen.

**After Agreement**



## **16. After Agreement**

### **Community Transfer Body's Offer**

16.1. Section 83 of the Act sets out the next steps after a relevant authority has issued a decision notice agreeing to an asset transfer request. The same process applies whether the request was agreed to initially or following a review or appeal.

16.2. In response to the decision notice, the community transfer body must submit an offer to take ownership of the land, lease it or take up the rights covered by the request. They must do this by the date stated in the decision notice, which has to be at least 6 months from the date of the decision notice. The offer must reflect the terms and conditions set out in the decision notice; if those terms and conditions are significantly different from those included in the request, and are not acceptable to the community transfer body, they can appeal or request a review (see chapter 17). The offer can also include other reasonable terms and conditions that may be needed to make sure the transfer goes ahead within a reasonable time.

16.3. It may be helpful to continue to discuss the proposals with the community transfer body during this period. They are also likely to progress applications for funding and other preparations during this period.

16.4. If no offer is made by the date set in the decision notice, (and the community transfer body did not appeal or request a review in relation to the terms and conditions within 20 working days of the decision notice), the process is at an end. The agreement to transfer the property to the community transfer body has no further effect, and the authority is free to keep it or dispose of it as it wishes.

16.5. The community transfer body can, of course, submit their offer at any point after the decision notice is issued. It may take much less than six months in straightforward cases.

### **Conclusion of contract**

16.6. Once you have received the community transfer body's offer, there can be further negotiations with them to conclude the contract. If the request is for ownership or a long-term lease this will be like any other property transaction, with exchanges between lawyers to agree the final wording, although for other rights the process may be much simpler.

16.7. The contract must normally be concluded within 6 months of the date of the community transfer body's offer. This does not mean the transfer has to take place within that time, but the date for the transfer, the price or rent and any other terms and conditions must be agreed. The contract may be conditional on other factors that are needed to allow the community proposals to go ahead, such as confirmation of funding or planning permission.



### **No contract concluded**

16.8. If no contract is concluded within 6 months of the offer, and no other action is taken, the process is at an end. The community transfer body has no further claim on the property, and the relevant authority can keep it or dispose of it as they wish. Sometimes this is by mutual consent –circumstances may change, funding or other requirements may not be secured, and it may no longer be practicable to take the project forward. However, if the community transfer body believes there is still progress to be made, they can take action to keep the request alive.

16.9. There are three options available to the community transfer body to keep the asset transfer request going beyond 6 months after the offer date:

- agree an extension with the relevant authority,
- apply to the Scottish Ministers for a direction to extend the period, or
- appeal to the Scottish Ministers, under section 83(6), to determine the terms and conditions of the contract, which the relevant authority can be required to accept.

16.10. An application to the Scottish Ministers for an extension must be made between 6 weeks and 4 weeks before the end of the 6 month period. The community transfer body must first try to agree an extension with the relevant authority, so this may be raised around 4 months into the negotiations. An extension can be agreed at any point, and need not be used if the contract is concluded sooner than expected. There is no limit on how long the extension may be, but there must be an end date.

16.11. If the end of the period is reached, either the original 6 months or an extended period, and no contract has been concluded, the community transfer body can appeal to the Scottish Ministers. This must be done within 10 working days of the end of the period. Procedures for such appeals are set out in chapter 20.

### **Application to Scottish Ministers for an extension**

16.12. The community transfer body can apply to the Scottish Ministers for a direction to extend the time allowed to conclude a contract in relation to an asset transfer request. The community transfer body must make its application between 30 working days (6 weeks) and 20 working days (4 weeks) before the end of the period of 6 months from the date of the community transfer body's offer. The guidance for community transfer bodies sets out the requirements for an application for a direction.

16.13. At the same time as making the application to the Scottish Ministers, the community transfer body must send a copy of the application to the relevant

authority. You will have 10 working days to send any comments to the Scottish Ministers and the community transfer body.

16.14. Having considered the application and any comments made by the relevant authority, the Scottish Ministers will decide whether or not to make the direction as requested. The direction will be copied to both the relevant authority and the community transfer body, and will state the period within which the contract must be concluded.

## 17. Reviews and Appeals - Introduction

17.1. A community transfer body can seek a review or appeal if:

- their request is refused,
- the request is agreed, but the terms and conditions in the decision notice are significantly different from those in the request, or
- no decision notice is issued within the required period.

17.2. The process depends on which relevant authority the request was made to.

- If the request was made to a local authority, the community transfer body can apply for an internal review by the authority, as set out in section 86 of the Act. This may also apply in future to requests made to other relevant authorities that are designated by the Scottish Ministers, for example if they are bodies closely related to local authorities. If the outcome of the review does not resolve the issue, or if no decision is made within the required period, the community transfer body can then appeal to the Scottish Ministers under section 88.
- If the request is made to the Scottish Ministers, the community transfer body can apply for a review by the Scottish Ministers under section 87.
- If the request is made to any other relevant authority, the community transfer body can appeal to the Scottish Ministers under section 85 of the Act.

17.3. Section 91 of the Act provides that a community transfer body cannot seek a review or appeal in relation to the terms and conditions in the decision notice if it has already made an offer, unless it first withdraws that offer. If the community transfer body makes an offer after submitting an appeal or application for review, the appeal or review is treated as having been withdrawn.

17.4. A community transfer body can also appeal to the Scottish Ministers if a request is agreed, but no contract is concluded within the required time limit – see chapter 21.

17.5. In all cases the final decision lies with the Scottish Ministers. There is no further route of appeal beyond them (except by judicial review).

## **18. Local authority review**

18.1. If an asset transfer request is made to a local authority, the community transfer body can apply for an internal review by the authority, as set out in section 86 of the Act. Procedures for such reviews are set out in the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (excluding Part 4 of the Regulations, which applies to reviews by the Scottish Ministers).

18.2. Section 89 of the Act allows Ministers to designate additional relevant authorities to which this route of review will apply. This could be the case, for example, if ALEOs are designated as relevant authorities in future.

18.3. Section 86(10) amends the Local Government (Scotland) Act 1973 so that a review of an asset transfer decision must be carried out by Councillors, it cannot be delegated to officers. This may have an impact on how initial decisions are taken, to ensure there is scope for a review to be carried out by Councillors not involved in the original decision.

### **Application for review and acknowledgement**

18.4. The community transfer body's application for review must be made in writing to the local authority within 20 working days beginning with the date of the decision notice, or if no decision has been made, within 20 working days beginning with the date of the deadline for the decision (6 months from the validation date, as given in the acknowledgement of the request).

18.5. The application must include the name and contact address of the community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out their reasons for requiring a review, and the procedure which they consider should be used to obtain further information, for example whether there should be a hearing or perhaps a site visit, in addition to written representations. The final decision on procedure is for the local authority.

18.6. The application for review must include a statement setting out the reasons for the application. This must cover all matters which the community transfer body intends to raise in the review. They may only bring forward further matters or evidence in response to representations on the application, or if the local authority request it. The application must also be accompanied by a list of documents and other evidence supporting the case, and copies of any of those documents or evidence the local authority does not already have. Regulation 5 requires all these review documents to be published on the local authority's website. Any personal information should be redacted before publication.

18.7. Under regulation 4, you must send an acknowledgement of the application for review to the community transfer body within 10 working days of receiving it. The

acknowledgement must state the date on which the application was made, and tell the community transfer body how the review documents can be inspected.

### **Notification of interested parties**

18.8. Also within 10 working days of receiving the application, you must give notice of the review to anyone who made representations on the original asset transfer request. These people are described as “interested parties”. Notice must be sent by post to any interested party who is a tenant or occupier of the land or building to which the request relates, or an owner if the relevant authority leases it. Other interested parties may be notified by post, or by newspaper advertisement. Every interested party should have given a name and address with their original representation, but newspaper advertisement may be more appropriate if there are large numbers to be notified.

18.9. Regulation 16 provides that, if the requirements for notification and publication of the original asset transfer request were not fully met at the time, the local authority must complete this before determining the review.

18.10. The notice to interested parties must state the name of the community transfer body and the land to which the asset transfer request relates. It must say that copies of any representations previously made about the asset transfer request will be considered by the local authority when determining the review, and that further representations may be made, giving information about how and by what date they must be made, and that a copy will be sent to the community transfer body for comment. It must also state how documents relating to the review can be inspected. A template notice is provided on the Scottish Government website. The notices must be published online with the other review documents.

18.11. Interested parties may make representations to the local authority within 10 working days of the date of the notice. After this they may not bring forward any further matters or evidence unless the local authority requests it.

18.12. You must send a copy of any representations received to the community transfer body, and inform them how and by what date they may make comments to the local authority. This must be at least 10 working days from the date of sending the copy to them.

18.13. If appropriate, regulation 15 allows you to require anyone who has submitted any documents or other material in connection with the review to provide additional copies to the local authority or to any other person, and you must make such materials available for inspection until the review is determined.

### **Further representations**

18.14. Once they have the initial evidence, any representations from interested parties and comments on those representations, the local authority may consider they have enough information to determine the appeal. If not, they may decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The community transfer body can say in their initial evidence what procedures they think should be used, but the final decision is with the local authority. Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case.

18.15. Any request for further information should be proportionate to the transfer request to which the review relates.

18.16. If further written submissions are required, you must send a notice to the community transfer body and any other person you want information from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the local authority. It must also give the name and address of each person the notice is sent to. Any information provided to the local authority in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the relevant authority, again copied to everyone else.

### **Hearing session rules**

18.17. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

18.18. If the local authority decides they should hold a hearing session to get more information on particular matters, you must send a notice to the community transfer body, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. The people invited must confirm within 10 working days if they plan to attend the hearing session. Anyone who does not do so will not be entitled to be involved in the procedures that follow. You must inform the people who have confirmed they will attend the hearing session of the date, time and place when it will be held, giving them as much notice as you consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

18.19. If they wish, the local authority may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, with

supporting documents. These statements will be copied to everyone attending the hearing.

18.20. The hearing session is intended to be a discussion, led by the local authority, on the particular matters set out in the notice. The people attending will not normally be allowed to question each other on their statements, and the local authority will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Apart from the points set out in the Hearing Session Rules, the local authority can determine the procedure of the hearing.

### **Additional evidence**

18.21. If the local authority proposes to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the review without giving the community transfer body and other “relevant parties” an opportunity to comment on that evidence. “Relevant parties” are anyone who was entitled to appear at a hearing session, if the evidence relates to matters considered at the hearing session, or anyone who was sent a notice requesting further information in writing, if the evidence relates to matters covered by that notice.

### **Decision**

18.22. Section 86(8) of the Act states that section 82, subsections (3) to (5) apply to a review as they apply to an original asset transfer request. This means that, in carrying out a review, the local authority must consider the request in the same way as the original process, taking into account the same factors and benefits of the request and alternative proposals.

18.23. Having carried out the review, the local authority may confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision. They must issue a new decision notice, which replaces the previous decision notice. The decision notice must be given within 6 months of the date the application for review was made, or a longer period if agreed with the community transfer body. If the request is agreed following the review, the process continues as set out in chapter 16. If it is refused (or no decision is made within the time limit, or the terms and conditions are not acceptable) the community transfer body can appeal to the Scottish Ministers – see chapter 19.

18.24. In addition to sending the decision notice to the community transfer body, you must publish it online and inform every person who made written representations in relation to the review of the decision and where the notice can be inspected.

## **19. Appeal to the Scottish Ministers**

19.1. If the asset transfer request was made to any relevant authority other than the Scottish Ministers or a local authority, the community transfer body can appeal to the Scottish Ministers, as set out in section 85 of the Act. Procedures for such appeals are set out in the Asset Transfer Request (Appeals) (Scotland) Regulations 2016.

19.2. Community transfer bodies can also appeal to the Scottish Ministers following a review by a local authority, as provided by section 88 of the Act. The procedure is the same in both cases. Part 4 of the regulations sets out the technical differences in how they refer back to section 88 instead of section 85.

### **Notice of appeal and local authority response**

19.3. The community transfer body must send a notice of appeal in writing to the Scottish Ministers within 20 working days beginning with the date of the decision notice, or if no decision has been made, within 20 working days beginning with the date of the deadline for the decision (6 months from the validation date, as given in the acknowledgement of the request, or a later date if agreed between you). For appeals following a local authority review, this relates to the date of the decision on the review, or the deadline for that decision.

19.4. The notice of appeal must include the name and contact address of the community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out why they are appealing, the matters which they consider should be taken into account in determining the appeal, and the procedure which they consider should be used, for example whether there should be a hearing or perhaps a site visit, in addition to written representations..

19.5. The Scottish Ministers may consider any aspect of the decision in their appeal, including issues not raised by the community transfer body, but they will mainly focus on the matters covered in the notice of appeal.

19.6. The notice of appeal must cover all matters which the community transfer body intends to raise in the appeal, and be accompanied by all documents or other evidence they intend to refer to. Further matters or evidence may only be brought forward in response to representations on the appeal, or if the Scottish Ministers request it.

19.7. The notice of appeal must be accompanied by a copy of the original asset transfer request, and all documents provided by the community transfer body to the relevant authority in connection with the request (and review, if appropriate). If a decision notice has been issued, this must also be attached. The Scottish Ministers will publish all these documents on their website.



19.8. At the same time as sending the notice of appeal to the Scottish Ministers, the community transfer body must send a copy to the relevant authority. This must be accompanied by a list of all the documents and evidence sent to the Scottish Ministers, and copies of anything the relevant authority does not already have.

19.9. The relevant authority must send a response to the Scottish Ministers within 15 working days of receiving the copy of the notice of appeal. This must set out the matters you consider should be taken into account in the appeal and the procedure you consider should be used. The final decision on what procedure to use will be up to the Scottish Ministers. You must also send to the Scottish Ministers copies of any documents that were before the relevant authority and were taken into account in reaching its decision on the request (or review), which were not included with the community transfer body's notice of appeal.

19.10. Your response must cover all matters which you intend to raise in the appeal, and be accompanied by all documents or other evidence you intend to refer to. Further matters or evidence may only be brought forward in response to representations on the appeal, or if the Scottish Ministers request it.

19.11. If there are any issues raised in the relevant authority's response that were not covered in the original decision notice, the community transfer body may send comments to the Scottish Ministers within 15 working days of receiving that response, together with any related documents or evidence. All this material will be published on the Scottish Ministers' website.

### **Notification of interested parties**

19.12. The relevant authority is responsible for giving notice of the appeal to any "interested parties" who made representations on the original asset transfer request (or review). This must be done within 10 working days of receiving the notice of appeal. The relevant authority must also send copies of the original representations to the Scottish Ministers, to be considered when determining the appeal.

19.13. Notice must be sent by post to any interested party who is a tenant or occupier of the land or building to which the request relates, or an owner if the relevant authority leases it. Other interested parties may be notified by post, or by newspaper advertisement. Every interested party should have given a name and address with their original representation, but newspaper advertisement may be more appropriate if there are large numbers to be notified.

19.14. The notice to interested parties must state the name of the community transfer body and the land to which the asset transfer request relates. It must say that copies of any representations previously made about the asset transfer request (or review) will be sent to the Scottish Ministers and the community transfer body and will be considered by the Scottish Ministers when determining the appeal, and

that further representations may be made, giving information about how and by what date they must be made. It must also state how documents relating to the review can be inspected.

19.15. If the requirements for notification and publication of the original asset transfer request were not fully met at the time, the Scottish Ministers must complete this before determining the appeal.

19.16. Interested parties may make representations to the Scottish Ministers within 10 working days of the date of the notice. After this they may not bring forward any further matters or evidence unless the Scottish Ministers request it.

19.17. The Scottish Ministers will send a copy of any representations received in relation to the appeal to the community transfer body and the relevant authority, and inform you how and by what date you may make comments on those representations to the Scottish Ministers. This must be at least 10 working days from the date of sending the copy.

19.18. The Scottish Ministers may require anyone who has submitted any documents or other material in connection with the appeal to provide additional copies to the Scottish Ministers or to any other person. They may require the relevant authority to make copies of such material available for inspection at an office, for example if it is not practical to view them online.

### **Further representations**

19.19. Once they have the initial evidence, any representations from interested parties and comments on those representations, the Scottish Ministers may consider they have enough information to determine the appeal. If not, they will decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case.

19.20. If further written submissions are required, the Scottish Ministers will send a notice to the community transfer body, the relevant authority, and any other person they want information from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the Scottish Ministers. It must also give the name and address of each person the notice is sent to. Any information provided to the Scottish Ministers in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the Scottish Ministers, again copied to everyone else.

## Hearing session rules

19.21. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

19.22. If the Scottish Ministers decide they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, the relevant authority, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. Apart from the community transfer body and the relevant authority, who are automatically entitled to appear, the people invited must confirm within 10 working days if they plan to attend the hearing session. The Scottish Ministers must inform you of the date, time and place when the session will be held, giving as much notice as they consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

19.23. If they wish, the Scottish Ministers may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, in relation to the matters specified to be considered at the hearing. They must send a notice requesting this, specifying the date by which those statements must be submitted. The hearing statement must be accompanied by a list of documents you intend to rely on, and a copy of any of those documents which has not already been submitted and published in connection with the appeal. Other people may speak at the hearing session in relation to your case; your hearing statement must list any such persons, setting out the matters which they are to address and their qualifications for doing so.

19.24. The notice requesting a hearing statement may also require you to copy it to other people who are entitled to appear at the hearing. All hearing statements from other people must be copied to the community transfer body and the relevant authority. The Scottish Ministers must also publish them online. The Scottish Ministers may request further information about matters contained in a hearing statement; that further information must also be copied to anyone else the hearing statement was sent to.

19.25. The hearing session is intended to be a discussion, led by the Scottish Ministers, on the particular matters set out in the notice of the session. The people attending will not normally be allowed to question each other on their statements, and the Scottish Ministers will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Anyone who is entitled to appear at the hearing session may be represented by someone else, if they wish. One representative may speak for a group of people who have similar interests in the case.

### **Additional evidence**

19.26. If the Scottish Ministers propose to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the appeal without giving the community transfer body, the relevant authority and other “relevant parties” an opportunity to comment on that evidence. “Relevant parties” are anyone who was entitled to appear at a hearing session, if the evidence relates to matters considered at the hearing session, or anyone who was sent a notice requesting further information in writing, if the evidence relates to matters covered by that notice.

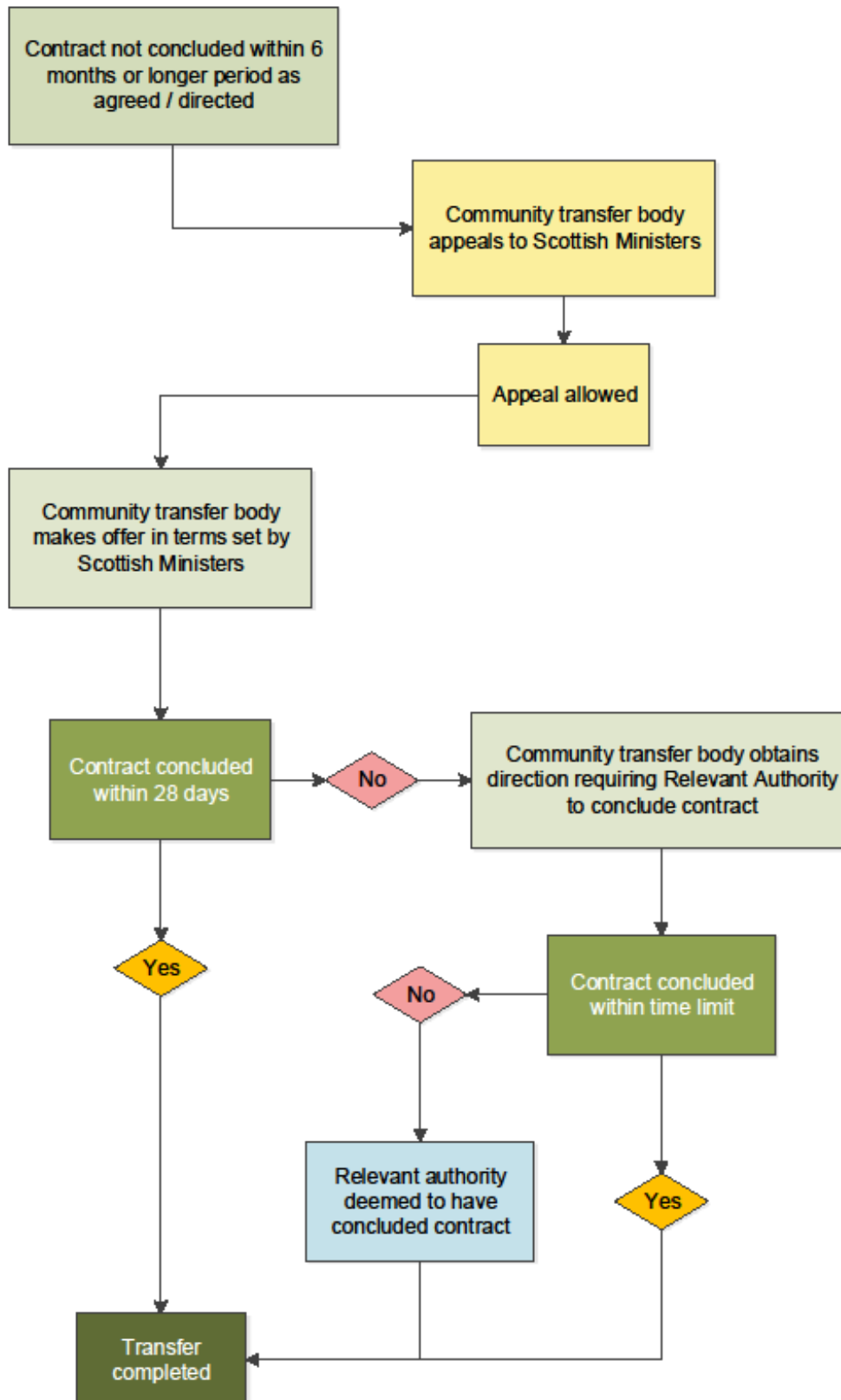
### **Decision**

19.27. Having carried out the appeal, the Scottish Ministers may allow or dismiss the appeal, and may reverse or vary any part of the original decision, even if that part was not mentioned in the appeal, including changing the terms and conditions set out in the decision notice.

19.28. If the outcome of the appeal is that the asset is to be transferred, or any terms and conditions in the decision notice are to be changed, the Scottish Ministers must issue a direction to the relevant authority requiring them to issue a new decision notice on those terms. This decision notice replaces any previous decision notice in relation to the asset transfer request.

19.29. The Scottish Ministers must notify the community transfer body and the relevant authority of its decision, and send the community transfer body a copy of any direction issued to the relevant authority. They must also publish their decision and any direction online and inform every person who made written representations in relation to the appeal of the decision and where the notice can be inspected.

**Appeal where no contract concluded**



## **20. Appeals where no contract is concluded**

20.1. Once an asset transfer request has been agreed, if no contract has been concluded within the period allowed, the community transfer body can appeal to the Scottish Ministers under section 83(6) of the Act. Procedures for such appeals are set out in the Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016.

20.2. Chapter 16 explains the timescale allowed for concluding a contract. These Regulations also cover the procedure for applying for a direction to extend the period.

20.3. Unlike appeals and reviews over the decision whether or not to agree to the asset transfer request, appeals where no contract has been concluded do not allow for any publication of documents or representations from people other than the community transfer body and the relevant authority. This is because the negotiation of a contract is likely to be complex and involve discussion of sensitive or commercially confidential issues.

20.4. The Scottish Ministers must appoint a panel of 3 people to consider the appeal and report back to Ministers on their findings and recommendations. The panel will be appointed from a pool of people with appropriate experience in relation to community asset transfer and property contracts; no more than one of them may be a civil servant.

### **Notice of appeal and relevant authority response**

20.5. The community transfer body must send a notice of appeal in writing to the Scottish Ministers within 10 working days beginning with the date of end of the period for concluding a contract.

20.6. The notice of appeal must include the name and contact address of the community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out the detail of the appeal and the matters which the community transfer body considers should be taken into account in determining the appeal. This is likely to outline how negotiations have progressed so far and why it has not been possible to conclude a contract. A statement must also be provided of the terms and conditions on which the community transfer body considers the land should be transferred, and how this differs from the terms and conditions set out in the decision notice.

20.7. The notice of appeal must be accompanied by copies of the original decision notice, the community transfer body's offer to the relevant authority, and all correspondence between the community transfer body and the relevant authority in relation to the negotiation of the contract.

20.8. The notice of appeal must cover all matters which the community transfer body intends to raise in the appeal, and be accompanied by all documents or other evidence they intend to refer to. Further matters or evidence may only be brought forward in response to the relevant authority's response, or if the review panel request it.

20.9. The community transfer body may also state by what procedure they consider the appeal should be conducted. The final decision on what procedure to use will be up to the review panel.

20.10. At the same time as sending the notice of appeal to the Scottish Ministers, the community transfer body must send a copy to the relevant authority. This must be accompanied by a list of all the documents and evidence sent to the Scottish Ministers, and copies of anything the relevant authority does not already have.

20.11. The relevant authority must send its response to the Scottish Ministers within 15 working days of receiving the copy of the notice of appeal. This must set out the matters you consider should be taken into account in the appeal, the procedure you consider should be used, and the terms and conditions on which you consider the land should be transferred. The relevant authority will not be allowed to bring forward any further issues or evidence after submitting its response, unless the review panel request it.

20.12. The community transfer body will have 15 working days to send the Scottish Ministers any comments on the relevant authority's response, including its proposed terms and conditions for the contract.

20.13. The Scottish Ministers may require the community transfer body or anyone else who has submitted any documents or other material in connection with the appeal to provide additional copies to the Scottish Ministers or to any other person.

### **Further representations**

20.14. The review panel may consider they have enough information in the notice of appeal, the relevant authority's response and the community transfer body's comments to determine the appeal. If not, they will decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The review panel may ask other people to provide further information on the case. This allows them to include experts on particular issues or people who may be affected by the transfer.

20.15. If further written submissions are required, the panel will send a notice to the community transfer body, the relevant authority, and any other person they want information from. The notice must set out the matters on which further

representations are required, and the date by which they are to be sent to the panel. It must also give the name and address of each person the notice is sent to. Any information provided to the panel in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the panel, again copied to everyone else.

### **Hearing session rules**

20.16. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

20.17. If the panel decide they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, the relevant authority, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. Apart from the community transfer body and the relevant authority, who are automatically entitled to appear, the people invited must confirm within 10 working days if they plan to attend the hearing session. The panel must inform you of the date, time and place when the session will be held, giving as much notice as they consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

20.18. If they wish, the panel may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, in relation to the matters specified to be considered at the hearing. They must send a notice requesting this, specifying the date by which those statements must be submitted. As with the notice of appeal, the hearing statement must be accompanied by a list of documents you intend to rely on, and a copy of any of those documents which has not already been submitted and published in connection with the appeal. Other people may speak at the hearing session in relation to your case; your hearing statement must list any such persons, setting out the matters which they are to address and their qualifications for doing so.

20.19. The notice requesting a hearing statement may also require you to copy it to other people who are entitled to appear at the hearing. All hearing statements from other people must be copied to the community transfer body and the relevant authority. The panel may request further information about matters contained in a hearing statement; that further information must also be copied to anyone else the hearing statement was sent to.

20.20. The hearing session is intended to be a discussion, led by the panel, on the particular matters set out in the notice of the session. The people attending will not normally be allowed to question each other on their statements, and the panel will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Anyone who is entitled to appear at the hearing session may be



represented by someone else, if they wish. One representative may speak for a group of people who have similar interests in the case.

### **Additional evidence**

20.21. If the Scottish Ministers propose to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the appeal without giving the community transfer body and the relevant authority an opportunity to comment on that evidence.

### **Decision**

20.22. Having carried out the appeal, the Scottish Ministers may allow the appeal or dismiss it. If they allow it, they must issue a notice to the community transfer body and the relevant authority setting out details of the terms and conditions of an offer which the community transfer body may make to the relevant authority in relation to the asset transfer request, and the date by which any such offer is to be made. In effect, the Scottish Ministers will write the contract which they expect the parties to agree.

20.23. If the appeal is dismissed, the asset transfer request process comes to an end and the relevant authority is free to keep or sell the property as it wishes.

20.24. If the appeal is allowed, the community transfer body is not required to make an offer based on the Scottish Minister's notice. They may decide not to proceed, or a contract may be agreed with the relevant authority on different terms. However, if the community transfer body does not make an offer in the terms of the notice within the specified period, the asset transfer request process comes to an end.

### **Offer, Conclusion of Contract and Directions**

20.25. If the community transfer body wants to proceed, it must, within the period specified in the appeal decision notice, submit an offer to the relevant authority containing "all and only" the terms and conditions set out in the appeal decision notice.

20.26. The relevant authority must conclude a contract with the community transfer body, on the basis of that offer, within 20 working days of the offer being submitted. If they do not, the community transfer body can apply to the Scottish Ministers for a direction under section 90(5) of the Act, requiring the relevant authority to conclude the contract.

20.27. An application for a direction under section 90(5) must be sent to the Scottish Ministers within 20 working days beginning with the date of the deadline for the contract to be concluded (which is 28 days after the offer is made). The application must include the name and contact address of the community transfer

body and the relevant authority, and the land to which the asset transfer request relates. It must include a statement of the steps taken by the community transfer body and the relevant authority to conclude a contract, the reasons why the community transfer body considers a direction should be given, and the period within which the relevant authority should be required to conclude the contract. Copies of the appeal decision notice and the community transfer body's subsequent offer must also be attached.

20.28. At the same time as making the application to the Scottish Ministers the community transfer body must send a copy to the relevant authority. You may send comments to the Scottish Ministers, within 10 working days of receiving that copy.

20.29. If the Scottish Ministers approve the application, they will give a direction to the relevant authority (copied to the community transfer body) requiring you to conclude a contract within a specified time. If this is not done, the relevant authority will automatically be deemed to have accepted the offer and concluded the contract with the community transfer body, and the transfer will go ahead (unless, in the meantime, the parties have concluded a contract on other terms or the community transfer body has withdrawn its offer).

20.30. If the contract is not concluded within the original 28 days and the community transfer body does not apply for a direction under section 90(5), or the application is refused, the asset transfer process comes to an end.

## 21. Reporting

21.1. Section 95 of the Act requires every relevant authority to publish an annual report setting out the numbers of asset transfer request received and their outcomes. The report must state:

- how many asset transfer requests were received
- how many requests were agreed to or refused
- for requests agreed to, whether they resulted in transfer of ownership, lease or conferral of other rights
- for appeals relating to requests made to the relevant authority, how many have been allowed, dismissed, or have resulted in any part of the authority's decision being reversed or changed
- where decisions made by the authority have been reviewed, how many have been confirmed, modified or substituted by a different decision.

21.2. The report must also describe anything the relevant authority has done to promote the use of asset transfer requests and support community transfer bodies to make requests.

21.3. Annual reports cover each year from 1 April to 31 March and must be published by 30 June. Note that the report will show the number of requests received in that year and the numbers agreed to or refused in that year – the figures will not be the same as many requests may be received in one year and decided the next year.

21.4. The first annual reports are not required until 30 June 2018. The Commencement Order provides that these should cover all requests received from the scheme coming into force up to 31 March 2018.

21.5. In addition to the information required by the Act, the Scottish Ministers may request further details to provide information on progress towards the target of 1 million acres in community ownership, and other policy issues. The information to be collected will be confirmed before the legislation comes into force.

## **Annex A: Asset Transfer Implementation Steering Group**

### **Members:**

Joanne Forbes	ACES, South Lanarkshire Council
Alison Fraser	SOLAR, Glasgow City Council
Linda Gillespie	Community Ownership Support Service
Angus Hardie	Scottish Community Alliance
Shona Harper	Scottish Government Property Division
Jon Hollingdale	Community Woodlands Association
Peter Peacock	Community Land Scotland
Brian Taylor	Scottish Government Finance Division
Ian Turner	Scottish Government Community Empowerment Team
Jean Waddie	Scottish Government Community Empowerment Team
Malcolm Wield	Forestry Commission Scotland
Rebecca Carr	Forestry Commission Scotland

Notes of the Steering Group's meetings can be found on the Scottish Government website at

<http://www.gov.scot/Topics/People/engage/CommEmpowerBill/AssetTransfer>

## **Annex B: Short-Life Working Group on Valuation and Assessment of Non-Financial Benefits**

### **Members:**

Nick Allan

Jim Boyle                      Director of Finance, Stirling Council (replaced David Robertson)

Tim Bridle                     Audit Scotland (Observer)

Gareth Evans                NHS Grampian

Joanne Forbes                ACES, South Lanarkshire Council

Alison Fraser                SOLAR, Glasgow City Council

Paul Furbank                West Lothian Council

Linda Gillespie              Community Ownership Support Service

Angus Hardie                Scottish Community Alliance

Shona Harper                Scottish Government Property Division

Jon Hollingdale             Community Woodlands Association

Sandra Holmes              Highlands and Islands Enterprise

Robin Johnston             Historic Environment Scotland

Donald McLellan            Forest Enterprise Scotland

Pauline Megson             Historic Environment Scotland

Peter Peacock              Community Land Scotland

Susan Robinson             CIPFA

Eric Samuel                 Big Lottery Fund / Scottish Funders' Forum

David Robertson            Director of Finance, Scottish Borders Council (initially)

Brian Taylor                Scottish Government Finance Division

Ian Turner                  Scottish Government Community Empowerment Team

Jean Waddie                Scottish Government Community Empowerment Team

Malcolm Wield              Forestry Commission Scotland

Rebecca Carr                Forestry Commission Scotland

Notes of the Working Group's meetings can be found on the Scottish Government website at

<http://www.gov.scot/Topics/People/engage/CommEmpowerBill/AssetTransfer>

## **Annex C: Useful Websites**

Community Ownership Support Service <http://www.dtascommunityownership.org.uk/>

Highlands and Islands Enterprise (for bodies in the Highlands and Islands area)  
<http://www.hie.co.uk/community-support/community-assets/>

Community Woodlands Association [www.communitywoods.org](http://www.communitywoods.org)

Community Energy Scotland <http://www.communityenergyscotland.org.uk/>

Community Land Advisory Service Scotland <http://sc.communitylandadvice.org.uk/>

Forestry Commission Scotland <http://scotland.forestry.gov.uk/managing/get-involved/communities>

National Standards for Community Engagement  
<http://www.scdc.org.uk/what/national-standards/>

Communities Channel Scotland <http://www.scdc.org.uk/what/national-standards/>

Community Land Scotland <http://www.communitylandscotland.org.uk/>

Community Funds <http://www.gov.scot/Topics/Built-Environment/regeneration/communityfunds>



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